



STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

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State Controller

KRISTINE CAZADD
Executive Director

March 9, 2012

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the March 20, 2012 Business Taxes Committee meeting. This meeting will address the proposed revisions to Compliance Policy and Procedure Manual Chapter 9, *Miscellaneous*.

Action 1 on the Agenda consists of items on which we believe industry and staff are in full agreement. Actions 2 - 7 concern proposed revisions regarding procedures related to local and district tax reallocations where staff and industry do not agree.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue. Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m. on March 20, 2012** in Room 121 at the address shown above.

Sincerely,

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

JLM:llw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. Robert Thomas, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichelt, Board Member's Office, Third District

Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Kristine Cazadd
Mr. Randy Ferris
Ms. Christine Bisauta
Mr. Robert Tucker
Mr. Cary Huxsoll
Ms. Susanne Buehler
Ms. Kirsten Stark
Ms. Leila Hellmuth
Ms. Lynn Whitaker
Ms. Kim Rios

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

<p>Action 1 — Agreed Upon Items</p> <p>Delete Sections 901.000 - 906.000 of Compliance Policy and Procedures Manual (CPPM) Chapter 9, <i>Miscellaneous</i>, and replace with proposed Sections 901.000 – 907.000.</p> <p>The nonconcurrent text in Sections 901.020, 901.030, 901.040, 905.010, 905.020, 905.030, 905.040, 905.050, and 907.000 is included in Actions 2 – 7 below.</p> <p>Agenda, page 3 and Issue Paper Exhibit 2</p>	<p>Approve rewrite of sections 901.000 through 907.000 of CPPM Chapter 9 as agreed upon by interested parties and staff.</p>
<p>Action 2 — Requirement that designated person provides a copy of its contract with the jurisdiction</p> <p>Relevant portions of proposed Sections 901.020, 901.030, 901.040, and 905.010</p> <p>Agenda, pages 4 – 6</p>	<p>Approve either:</p> <p>Staff’s recommendation that a copy of the contract between the jurisdiction and the representative be provided before the representative is given access to BOE records.</p> <p style="text-align: center;">OR</p> <p>MuniServices’ recommendation that a designated person is not required to provide a contract before it can access BOE records.</p>
<p>Action 3 — Threshold for processing fund transfers</p> <p>Relevant portion of proposed Section 905.020</p> <p>Agenda, page 7</p>	<p>Approve either:</p> <p>Staff’s recommendation to set the minimum threshold for processing fund transfers at \$250 per quarter.</p> <p style="text-align: center;">OR</p> <p>HdL’s recommendation to set the minimum threshold for processing fund transfers at \$100 per quarter.</p> <p style="text-align: center;">OR</p> <p>MuniServices’ recommendation to set the minimum threshold for processing fund transfers at \$50 per quarter or \$250 for the entire period in dispute, whichever is less.</p>

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

<p>Action 4 — Timeframe to acknowledge submissions</p> <p>Relevant portion of proposed Section 905.030</p> <p>Agenda, page 7</p>	<p>Approve either:</p> <p>Staff's recommendation to allow 30 calendar days for Allocation Group (AG) staff to acknowledge submissions intended as petitions.</p> <p style="text-align: center;">OR</p> <p>MunServices' recommendation to allow seven calendar days for AG staff to acknowledge submissions intended as petitions.</p>
<p>Action 5 – Documenting a Date of Knowledge</p> <p>Relevant portion of proposed Section 905.040</p> <p>Agenda, pages 7 - 8</p>	<p>Approve either:</p> <p>Staff's proposed explanation of when a Date of Knowledge is operationally documented by BOE staff.</p> <p style="text-align: center;">OR</p> <p>MuniServices' proposed language which provides that when establishing a Date of Knowledge, staff must include the information required under Regulation 1807 that supports the probability of a misallocation and should contact the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact.</p>
<p>Action 6 – AG Supervisor follow-up timeframes</p> <p>Relevant portion of proposed Section 905.050</p> <p>Agenda, page 9</p>	<p>Approve either:</p> <p>Staff's recommendation that the AG lead follow up on assignments aged 180-270 days and the AG supervisor follow up on assignments aged greater than 270 days.</p> <p style="text-align: center;">OR</p> <p>MuniServices' recommendation that the AG lead follow up on assignments aged 90-180 days and the AG supervisor follow up on assignments aged greater than 180 days.</p>
<p>Action 7 – Informing jurisdictions prior to processing a large deallocation of local tax resulting from a refund or credit in an audit</p> <p>Proposed new Section 907.000</p> <p>Agenda, page 9</p>	<p>Approve either:</p> <p>Staff's recommendation that informs jurisdictions when a pending refund or credit in an audit results in a deallocation of \$100,000 or more in local tax to the jurisdiction.</p> <p style="text-align: center;">OR</p> <p>HdL's and MuniServices' recommendation that informs jurisdictions when a pending refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to the jurisdiction.</p>

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

Action Item	Staff and Industry's Proposed Language
Action 1 — Agreed Upon Items Proposed revisions to Sections 901.000 – 907.000 of CPPM Chapter 9, <i>Miscellaneous</i> , other than the portions of sections noted below.	See Exhibit 2 for staff's rewrite of Sections 901.000 through 907.000. Exhibit 2 includes staff proposed language that is not agreed to by interested parties. The nonconcurring language is provided in Actions 2 through 7 of this agenda.

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

Action Item	Language Proposed by Staff	Language Proposed by MuniServices	Language Proposed by HdL
ACTION 2 – 901.020 INFORMATION SUBJECT TO DISCLOSURE	<p><i>(beginning paragraph 3):</i></p> <p>The Allocation Group (AG) and field offices, before allowing a person access to confidential taxpayer information, must verify with LRAU that a person seeking access to confidential records on behalf of a jurisdiction imposing local or district tax is authorized by a valid resolution of that jurisdiction. If the person is a designated person of the jurisdiction, the AG and field offices must also verify that the designated person has an existing contract with that jurisdiction. This verification may be done by checking the current LRAU Resolution Log or by telephone or email. If LRAU does not have a copy of the required authorizing document(s) on file, the person must provide a certified copy of such document(s), which should be faxed or scanned and emailed by AG or the field office to LRAU. LRAU will verify that the document(s) meets all the administrative criteria required to authorize the person to view confidential records. If the documents do <i>not</i> meet the criteria, the person must be advised that, pending receipt of the applicable document(s), access to confidential file material will be denied.</p> <p>Questions regarding the validity of resolutions, contracts, or other RTC section 7056 authorization issues should</p>	<p>The Allocation Group (AG) and field offices, before allowing a person access to confidential taxpayer information, must verify with LRAU that a person seeking access to confidential records on behalf of a local jurisdiction imposing a local or district tax is authorized by a valid resolution of that jurisdiction. If the person is a designated person of the jurisdiction, the AG and field offices must also verify that the designated person has an existing contract with that jurisdiction. This verification may be done by checking the current LRAU Resolution Log or by telephone or email. If LRAU does not have a copy of the required authorizing document(s) on file, the person must provide a certified copy of such document(s), which should be faxed or scanned and emailed by AG or the field office to LRAU. LRAU will verify that the document(s) meets all the administrative criteria required to authorize the person to view confidential records. If the documents do <i>not</i> meet the criteria, the person must be advised that, pending receipt of the applicable document(s), access to confidential file material will be denied.</p> <p>Questions regarding the validity of resolutions, contracts, or other RTC section 7056 authorization issues should</p>	[none]

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

Action Item	Language Proposed by Staff	Language Proposed by MuniServices	Language Proposed by HdL
	be directed to LRAU.	be directed to LRAU.	
901.030 REQUEST TO REVIEW SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED BY HEADQUARTERS	Requests by jurisdiction representatives to review taxpayer records should be forwarded to AG for processing. AG will verify that a valid resolution and contract are on file and will order the requested files from the Taxpayer Records Unit for review. AG will then review each file to locate and remove any information not subject to disclosure prior to presenting the file to the requester for review.	Requests by jurisdiction representatives to review taxpayer records should be forwarded to AG for processing. AG will verify that a valid resolution and contract are <u>is</u> on file and will order the requested files from the Taxpayer Records Unit for review. AG will then review each file to locate and remove any information not subject to disclosure prior to presenting the file to the requester for review.	
901.040 REQUEST TO REVIEW SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED BY A FIELD OFFICE	Requests for records maintained at the field office should be forwarded to either the District Principal Auditor or the District Principal Compliance Supervisor, who will confirm with LRAU that a valid resolution and contract are on file. Audit or compliance staff, when contacted directly by a person seeking access to taxpayer records on a jurisdiction's behalf, will inform and consult with the District Principal Auditor or District Principal Compliance Supervisor before acting on the request. If the request concerns the examination of a field office file and such file exists, a review of that file will be made to locate and remove any material not	Requests for records maintained at the field office should be forwarded to either the District Principal Auditor or the District Principal Compliance Supervisor, who will confirm with LRAU that a valid resolution and contract are <u>is</u> on file. Audit or compliance staff, when contacted directly by a person seeking access to taxpayer records on a jurisdiction's behalf, will inform and consult with the District Principal Auditor or District Principal Compliance Supervisor before acting on the request. If the request concerns the examination of a field office file and such file exists, a review of that file will be made to locate and remove any material not	

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Action Item	Language Proposed by Staff	Language Proposed by MuniServices	Language Proposed by HdL
905.010 DEFINITIONS Petition	<p>subject to disclosure prior to presenting the file to the requester for review. The requester will be given access only to the field office files that pertain to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction it is determined to represent. Care will be taken to ensure that the requester is given access only to taxpayer records that pertain to the authorizing jurisdiction.</p> <p><i>(beginning paragraph 2):</i></p> <p>“Petition” also includes an appeal by a jurisdiction based on a notification from LRAU that local taxes or district taxes previously allocated to it were misallocated and will be reallocated. If LRAU has a valid resolution and contract on file authorizing a representative of the jurisdiction to view confidential taxpayer information under RTC section 7056, LRAU will also send this notification to that representative.</p>	<p>subject to disclosure prior to presenting the file to the requester for review. The requester will be given access only to the field office files that pertain to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction it is determined to represents. Care will be taken to ensure that the requester is given access only to taxpayer records that pertain to the authorizing jurisdiction.</p> <p>“Petition” also includes an appeal by a jurisdiction based on a notification from LRAU that local taxes or district taxes previously allocated to it were misallocated and will be reallocated. If LRAU has a valid resolution and contract on file authorizing a representative of the jurisdiction to view confidential taxpayer information under RTC section 7056, LRAU will also send this notification to that representative.</p>	

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

Action Item	Language Proposed by Staff	Language Proposed by MuniServices	Language Proposed by HdL
ACTION 3 – 905.020 SUBMITTING PETITIONS	The minimum threshold for processing fund transfers is \$250 per quarter.	The minimum threshold for processing fund transfers is \$250-\$50 per quarter <u>or \$250 for the entire period in dispute, whichever is the lesser. The period in dispute means the three quarters prior to the Date of Knowledge quarter and the Date of Knowledge Quarter and all quarters between the Date of Knowledge and the date the decision to correct the misallocation becomes final.</u>	The minimum threshold for processing fund transfers is \$250-100 per quarter.
ACTION 4 – 905.030 ACKNOWLEDEMENT AND REVIEW OF SUBMISSIONS	AG will log in and acknowledge submissions intended as petitions via email within 30 calendar days of receipt by the Board.	AG will log in and acknowledge submissions intended as petitions via email within 30-7 calendar days of receipt by the Board.	[none]
ACTION 5 – 905.040 DATE OF KNOWLEDGE	A potential misallocation is "operationally documented" when a BOE employee questions the allocation based on information contained in the Board files <i>and</i> provides sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. In other words, a date of knowledge is operationally documented when two conditions are satisfied: (1) an employee of the Board discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and (2) the Board employee questions and documents that suspected erroneous allocation. The operationally	A potential misallocation is "operationally documented" when a BOE employee questions the allocation based on information contained in the Board files <i>and</i> provides sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. In other words, a date of knowledge is operationally documented when two conditions are satisfied: (1) an employee of the Board discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and (2) the Board employee questions and documents that suspected erroneous allocation. <u>Such documentation must</u>	[none]

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

Action Item	Language Proposed by Staff	Language Proposed by MuniServices	Language Proposed by HdL
	<p>documented date of knowledge will be the date the employee documents the date on which the distribution was questioned, such as the date the employee issues a BOE-75 form, <i>LRAU Goldenrod</i> and references the data that supports the suspected misallocation. An LRAU goldenrod is an internal form used by LRAU to record questionable local and/or district tax distributions, fund transfer approvals, and reallocation notifications.</p>	<p><u>include the information required for a petition under Regulation 1807 that supports the probability of a misallocation. The information should also include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact.</u> The operationally documented date of knowledge will be the date the employee documents the date on which the distribution was questioned, such as the date the employee issues a BOE-75 form, <i>LRAU Goldenrod</i> and references the data that supports the suspected misallocation. An LRAU goldenrod is an internal form used by LRAU to record questionable local and/or district tax distributions, fund transfer approvals, and reallocation notifications.</p>	

AGENDA — March 20, 2012 Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous

Action Item	Language Proposed by Staff	Language Proposed by MuniServices	Language Proposed by HdL
ACTION 6 – 905.050 REVIEW BY SALES AND USE TAX DEPARTMENT Investigation	The AG lead and AG supervisor will review the status of petitions as the petitions age. The AG lead will follow-up monthly with staff for any assignments aged 180 - 270 days. The AG supervisor will follow up on assignments aged greater than 270 days.	The AG lead and AG supervisor will review the status of petitions as the petitions age. The AG lead will follow-up monthly with staff for any assignments aged 90-180 <u>270-180</u> days. The AG supervisor will follow up on assignments aged greater than 270-180 days.	[none]
ACTION 7 – 907.000 INFORMING JURISDICTIONS PRIOR TO PROCESSING A LARGE DEALLOCATION OF LOCAL TAX RESULTING FROM A REFUND OR CREDIT IN AN AUDIT	Sales and use tax refunds and credits in audits occasionally result in large deallocations of local tax to individual jurisdictions. When a pending refund or credit in an audit results in a deallocation of \$100,000 or more in local tax to a jurisdiction, the Refund Section will send a courtesy email to that jurisdiction and its authorized representative. The email will be sent when the Public Agenda Notice is published for the Board Meeting in which the pending refund is placed on calendar for Board approval. The email will be for information purposes only. Such a deallocation will not be subject to appeal by a jurisdiction or its authorized representative.	Sales and use tax refunds and credits in audits occasionally result in large deallocations of local tax to individual jurisdictions. When a pending refund or credit in an audit results in a deallocation of \$100 <u>\$50</u> ,000 or more in local tax to a jurisdiction, the Refund Section will send a courtesy email to that jurisdiction and its authorized representative. The email will be sent when the Public Agenda Notice is published for the Board Meeting in which the pending refund is placed on calendar for Board approval. The email will be for information purposes only. Such a deallocation will not be subject to appeal by a jurisdiction or its authorized representative.	Sales and use tax refunds and credits in audits occasionally result in large deallocations of local tax to individual jurisdictions. When a pending refund or credit in an audit results in a deallocation of \$100 <u>\$50</u> ,000 or more in local tax to a jurisdiction, the Refund Section will send a courtesy email to that jurisdiction and its authorized representative. The email will be sent when the Public Agenda Notice is published for the Board Meeting in which the pending refund is placed on calendar for Board approval. The email will be for information purposes only. Such a deallocation will not be subject to appeal by a jurisdiction or its authorized representative.

Issue Paper Number **12-002**



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Proposed procedure manual revisions regarding local and district tax reallocations

I. Issue

Proposed updates to the Board of Equalization (BOE) manuals to incorporate guidelines and procedures related to local and district tax reallocations, including petitions for reallocations.

II. Alternative 1 - Staff Recommendation

Staff recommends that Sections 901.000 – 906.000 of Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous*, be rewritten as provided in Exhibit 2. Except for provisions in Sections 901.020 - 901.040, 905.010 – 905.050, and 907.000, HdL Companies (HdL) and MuniServices, LLC (MuniServices) agree with staff's proposed revisions. Staff's recommendations include the following areas that interested parties disagree with:

- A proposal to raise the minimum threshold for processing fund transfers from \$50 per quarter to \$250 per quarter.
- A procedure for BOE to inform jurisdictions as a courtesy when a pending refund or credit in an audit results in a deallocation of \$100,000 or more in local tax to a jurisdiction.
- Includes other procedures that are disagreed with by MuniServices including, the requirement that a designated person provide a copy of its contract with the jurisdiction, deadlines for the Allocation Group (AG) to acknowledge submissions and follow up on aged assignments, and the CPPM language and procedures for establishing a Date of Knowledge.

III. Other Alternatives Considered

Alternative 2 – HdL Recommendation

In addition to the areas agreed upon with staff, HdL discusses its proposed revisions to CPPM Chapter 9 in Exhibit 3. HdL:

- Opposes staff's proposed threshold increase for processing fund transfers and suggests an alternative amount of \$100 per quarter.
- Proposes that BOE inform jurisdictions as a courtesy when a proposed refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

Alternative 3 – MuniServices Recommendation

In addition to the areas agreed upon with staff, MuniServices recommends CPPM Chapter 9 be revised as discussed in Exhibit 4. MuniServices:

- Opposes staff's proposed threshold increase for processing fund transfers and recommends the threshold be \$50 per quarter or \$250 for the entire period in dispute, whichever is less.
- Proposes that BOE inform jurisdictions as a courtesy when a proposed refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.
- Disagrees with the requirement in staff's proposal that a person designated by a jurisdiction as its representative must provide a copy of its contract with that jurisdiction.
- Believes that the time for AG to acknowledge receipt of a submission should be shortened from 30 days to seven.
- Adds language stating that when establishing a Date of Knowledge, staff must include the information required under Regulation 1807 that supports the probability of a misallocation. That information should also include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact.
- Believes that the follow-up time on aged assignments in AG should be shortened. It proposes the AG lead follow up on any assignments aged 90-180 days and the AG supervisor follow up on assignments aged greater than 180 days.

The cities of San Joaquin, Delano, Santa Ana, Fullerton, Belmont, Napa, Solvang, Riverbank, Ridgecrest, Modesto, Villa Park, San Jose, Folsom, San Diego, and Roseville also oppose increasing the threshold for processing fund transfers. (See Exhibit 5.)

IV. Background

In 2001, CPPM Chapter 9 was revised to include guidance on local and district tax reallocation procedures. Revisions to CPPM Chapter 9 were last published in April 2003.

Much of the information contained in Chapter 9 comes from Regulation 1807, *Petitions for Reallocation of Local Tax*, which provides the process for reviewing requests by jurisdictions for investigation of suspected misallocation of local taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The similar process for reviewing distributions of taxes imposed under the Transactions and Use Tax Law (commonly called “district taxes”) is provided in Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. In 2008, Regulations 1807 and 1828 were repealed and readopted to streamline the appeals process. To further improve and clarify the appeals process, additional revisions to Regulations 1807 and 1828 were made in 2011. Those revisions were approved by the Office of Administrative Law on February 7, 2012.

On December 1, 2011 and January 18, 2012 staff met with interested parties to discuss revisions to BOE procedure manuals and training materials to incorporate the 2008 and 2011 regulation changes. Additional revisions to explain and improve procedures related to local and district tax reallocations were also made.

V. Discussion

CPPM Chapter 9 has been completely rewritten from the current published text. Staff’s proposed CPPM revisions are included in Exhibit 2 and shown as new text. HdL’s proposed revisions are discussed in its submission (Exhibit 3) and MuniServices’ proposed revisions are included in Exhibit 4. Differences between staff’s and interested parties’ proposals are compared in the Issue Paper Agenda. These unresolved issues are discussed below.

Review of BOE records by jurisdictions and their representatives. CPPM sections 901.010 – 901.060 provide procedures for local jurisdiction access to BOE’s confidential taxpayer records. The sections explain who may review records, what information is subject to disclosure, and how BOE staff processes requests to review records. With the assistance of attorneys on the Legal Department's Administrative Oversight Team, staff revised the sections for clarity and to make the text consistent with the actual language used in Revenue and Taxation Code (RTC) section 7056(b). Since staff’s Second Discussion Paper, additional revisions to CPPM section 901.020 were made regarding access to countywide pool records by districts for the purpose of ensuring that the language is consistent with the current published text approved by the Board in 2001.

HdL commented in its submission that it recognizes that in order to have a Resolution of Confidentiality it must have an existing contract with the jurisdiction, and therefore does not have an issue with providing copies of both documents.

MuniServices agrees with most of staff’s proposed language, but disagrees that a representative should provide a copy of its contract with a local jurisdiction before a representative is granted access to BOE’s confidential taxpayer records. MuniServices argues that the BOE has no legal authority, and no expertise in evaluating the validity of its contracts with jurisdictions. MuniServices believes that a resolution provides a factual representation about the contractual relationship and is the only required document that is a pre-requisite for a representative to have access to BOE records. MuniServices stated that while it will continue to comply with requests for copies of its contracts as a matter of courtesy, MuniServices opposes the language added to the CPPM that references submission of a copy of the contract.

Staff disagrees with MuniServices' position. Although RTC section 7056 does not specifically state that a representative or local jurisdiction is required to provide a copy of its contract to the BOE, it is staff's position that providing the contract is consistent with the intent of section 7056(b) and is necessary to the proper administration of the statute. Production of the contract between a local jurisdiction and its representative, such as MuniServices or HdL, provides staff with assurances that the BOE's confidential records are not being released to an unauthorized person. Review of the contract also affords the BOE with assurances that an existing contract is in effect and that the limitations and safeguards for taxpayer confidentiality are being abided by before confidential taxpayer information is released to a representative. Staff is not making a determination as to the overall validity of the representative's contract with the local jurisdiction as suggested by MuniServices, but is simply reviewing the contract for compliance with section 7056(b).

Subdivision (b)(1)(A) of section 7056 provides that if a local jurisdiction designates a representative to examine the BOE's records, the local jurisdiction's resolution must certify that the jurisdiction has an existing contract with that representative to examine the BOE's sales and use tax records. Subdivisions (b)(1)(C)-(D) of section 7056 further provide that the contract between the jurisdiction and the representative must prohibit a representative from: disclosing information contained in, or derived from, those sales or transactions and use tax records to anyone other than an authorized officer or employee of the jurisdiction; performing consulting services for a retailer during the term of the contract; and retaining the information contained in, or derived from, those sales or transactions and use tax records after the contract has expired. The intent of the prohibitions was to implement limits and safeguards within the statute to prevent the improper dissemination of taxpayer information. (81 Ops.Cal.Atty.Gen. 379, 383 (Dec. 1, 1998).)

Experience has also shown that review of the contract by the BOE is necessary to the proper administration of the statute. Over the years, staff has been provided contracts that do not contain all of the required limitations and safeguards, or that contain added provisions that are in direct violation of subdivision (b)(1)(C)-(D). In the last year, staff encountered situations where the representative was designated in the jurisdiction's resolution, but the contract between the jurisdiction and the representative had expired. Staff notes that resolutions are perpetual in nature, while contracts can and do often expire. Staff also recently reviewed a contract that permitted a representative to retain the BOE's confidential taxpayer information after the contract expired despite representations made in the local jurisdiction's resolution to the contrary. Moreover, although a resolution may include the provisions of subdivision (b)(1) of section 7056, the resolution does not necessarily bind the representative who is not a signatory to the resolution. The representative is not bound to the provisions set forth in the resolution until the contract between the representative and the local jurisdiction is executed. To this end, staff's long standing policy is to review the contract between a representative and a jurisdiction. As such, it is also staff's position that the language added to the CPPM is not only consistent with the legislative intent, but necessary to the proper administration of the statute.

Threshold for manually processing fund transfers. Staff proposes revising CPPM section 905.020 to explain that the minimum threshold for processing fund transfers is \$250 per quarter. The current \$50 per quarter threshold has been in place since 1990 and increasing the amount will make it consistent with the current threshold for processing a reallocation when a reallocation error is discovered in an audit. That audit threshold was raised from \$100 to \$250 per quarter in July 2010. Staff believes it is not cost effective to continue to process changes of small amounts (excluding tax area code (TAC) changes, discussed below) and that staff time would be better spent investigating larger claims.

The exception to the proposed threshold recommended by staff or interested parties would be for TAC changes.¹ In cases where the investigation results in a TAC change, BOE's computer system will continue to automatically process fund transfers for a majority of the occurrences for periods that have been funded within two quarters prior to the date of the TAC change regardless of whether the threshold was met in those quarters.

MuniServices and several cities (see Exhibits 4 and 5) questioned staff's belief that the BOE has the authority to establish and revise the threshold for processing fund transfers. Staff supports its position with RTC sections 7202, subdivision (d), and 7270, which provide that the BOE will perform all functions incident to the administration or operation of the local jurisdictions' tax ordinances. In addition, Government Code section 15606 subdivision (a) permits the Board to prescribe rules for its own governance and for the transaction of its business.

Staff believes that raising the threshold for processing fund transfers will allow staff more time to work larger petitions. To assess the impact of staff's proposal, AG staff reviewed petitions submitted during the week of September 26-30, 2011. Of the 241 petitions submitted, 36 (15%) either stated amounts that were below the \$250 threshold or did not state an amount, but the taxpayer reported total local tax less than \$250. AG staff currently receives an average of approximately 270 non-TAC petitions per month (approximately 1,624 petitions were received between June 1, 2011 and November 30, 2011; $1,624 \div 6 = 270$). Accordingly, staff estimates that approximately 40 fewer petitions per month would be worked if staff's proposal were accepted. Estimating 8 hours of staff time to work each petition (actual average staff time per case is approximately 11 hours; staff is using 8 hours because cases with a lower threshold are generally simpler than other cases), AG would save 320 hours per month (40×8). This savings is nearly the equivalent to the work of two full-time employees.

HdL disagrees with the proposal to raise the threshold to \$250 and suggests an alternative amount of \$100 per quarter as a reasonable compromise, noting that it is double the current threshold. HdL explains that its client jurisdictions, in return for the administrative fees paid, are entitled (within reason) to all local sales, use, and district tax owed. HdL also believes that staff's estimated time savings are overstated. It explains that in the week of September 26-30, 2011, HdL filed 158 cases. Of that total, there were two non-TAC petitions where the local tax amount involved was below \$250. In both of those cases, a registration change was required so that future periods would be allocated correctly. Thus, both of those cases needed to be "worked." HdL believes the estimated time savings of 8-11 hours per case by virtue of not taking the extra step of processing a fund adjustment appears considerably overstated.

MuniServices also opposes staff's proposal to raise the threshold to \$250 as unauthorized and harmful to small jurisdictions. MuniServices further requests that this issue be removed from the BTC process and that full hearings be held separately on this issue. In its submission, MuniServices suggested language providing that the threshold be \$50 per quarter or \$250 for the entire period in dispute, whichever is the lesser amount. It defines the period in dispute as the three quarters prior to the Date of Knowledge quarter and the Date of Knowledge Quarter and all quarters between the Date of Knowledge and the date the decision to correct the misallocation becomes final.

During the interested parties process staff had discussed proposing a cumulative threshold amount, however, staff decided not to recommend the idea. Staff is concerned that it will be difficult to explain how a cumulative threshold would work and could be confusing to implement. Staff also disagrees with the \$250 cumulative amount proposed by MuniServices. Staff's purpose for raising the threshold is to

¹ Tax area codes are used by BOE to identify specific jurisdictions and to distribute local taxes to the appropriate jurisdictions. At times, BOE will have a correct address for a taxpayer, but an incorrect tax area code assigned to that address. Jurisdictions may file petitions requesting correction to the tax area code and reallocation of local taxes to the correct jurisdiction.

decrease staff time spent on small reallocations. The proposed \$250 cumulative amount would likely result in an increase in small dollar petitions because the petitions would no longer have to meet the current \$50 per quarter amount. MuniServices' proposal essentially eliminates the current \$50 threshold.

Acknowledgment and review of submissions by AG. Since the staff's Second Discussion Paper, staff has made additional revisions to CPPM section 905.030 to clarify AG's process for acknowledgement and review of submissions. Staff's proposal provides that submissions intended as petitions will be acknowledged by AG within 30 days of receipt. AG will review submissions for completeness, and absent extraordinary circumstances, within 30 calendar days of the acknowledgement of receipt, should advise the submitting jurisdiction that the submission was accepted as a valid petition or return the submission for correction.

Staff and interested parties agree on this clarification, however, MuniServices recommends that AG acknowledge receipt of submissions by email within 7 calendar days of receipt instead of staff's proposed 30 calendar days.

Staff believes that 30 days is an appropriate outer timeframe to acknowledge submissions. It is not unusual for AG to receive hundreds of submissions at one time and 7 calendar days may not be sufficient for staff to log in and acknowledge receipt of those submissions, particularly if those days fall over a holiday. Although staff believes it will generally acknowledge submissions within a few days, staff thinks 30 days is a reasonable outside boundary. Thirty days is also consistent with the time allowed for acknowledgement of petitions for redetermination under RTC section 6561.

Date of Knowledge. In its submission, HdL states that it agrees with other interested parties that BOE staff should be held to the same requirements for establishing a Date of Knowledge as are jurisdictions and their representatives under Regulation 1807. It further explains that if BOE staff has in its possession sufficient facts to indicate the probability of a misallocation this should be operationally documented for the review and consideration of all interested parties. Where BOE staff has not completed (or in some cases even initiated) an investigation into an observed reporting aberration, it should not be deemed to have established a Date of Knowledge.

MuniServices also believes that it is imperative BOE staff be held to the same requirements for establishing a Date of Knowledge as are the jurisdictions and their representatives. MuniServices' proposed revisions to CPPM section 905.040 include language to this effect, and also provide that the information to document a Date of Knowledge should include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact.

Staff agrees that in order to operationally document a potential misallocation it must question an allocation and provide sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. These requirements are explained in staff's proposed language in CPPM section 905.040. BOE staff uses a variety of resources to support the probability that a misallocation has occurred such as registration information, prior returns, property tax records, audit reports, or other confidential information available to BOE through information sharing with other government agencies. Staff believes that this information meets or exceeds the information required in Regulation 1807 to be a petition. Although staff may contact the taxpayer as part of its investigation, that contact is not always necessary when staff has sufficient information to establish a basis for the misallocation. Staff believes the additional language suggested by MuniServices is unnecessary and could lead to disagreement between staff and representatives over whether circumstances warranted contact with the taxpayer.

Follow-up times by the AG lead and AG supervisor. Staff proposes in CPPM section 905.050 that the AG lead will follow up monthly with staff for any investigation assignments aged 180-270 days and the AG supervisor will follow up on assignments aged greater than 270 days. MuniServices recommends these follow-up times be reduced to follow up by the AG lead on assignments aged 90-180 days and follow up by the AG supervisor on assignments aged greater than 180 days.

Staff believes its proposed timeframes are reasonable given staff workload. Follow up at 180 days is also consistent with the provisions in Regulation 1807(b)(3) which allow the petitioner to request AG issue its decision.

Informing jurisdictions of pending large deallocations of local tax (new CPPM section 907.000). Sales and use tax refunds and credits in audits occasionally result in large deallocations of local tax to individual jurisdictions. Jurisdictions affected by proposed refunds are not a party to these cases and are not informed when a local tax deallocation is pending. Jurisdictions do not have appeal rights in these cases.

However, HdL explains that on occasion, its clients have felt blind-sided by a very large deallocation with no advance notice. Accordingly, HdL suggests BOE inform jurisdictions prior to processing large deallocations that result from refunds or credits in audits. Initially, HdL proposed that Board staff inform jurisdictions of any pending refund or audit credit that resulted in a deallocation of \$10,000 or more in local tax. Staff replied that \$10,000 was far too low and would significantly increase staff workload. Staff suggested a jurisdiction be informed if it was to be deallocated \$100,000 or more in local tax.

In its current submission, HdL explains that it represents 59 jurisdictions for which \$100,000 is more than 25% of their average quarterly allocation. While it appreciates the desire to have a flat threshold universally applied (as opposed to a percentage-based trigger), the downside is that smaller jurisdictions are disproportionately affected. In the spirit of compromise, HdL now suggests the threshold be set at \$50,000. MuniServices supports the proposed change, and also recommends the threshold be set at \$50,000.

Staff understands interested parties' concerns about the effect of large deallocations on local jurisdictions. While staff does not actively support the proposed procedure, it does not oppose the idea if the threshold is set at a high enough level so that it does not negatively impact staff workload. Jurisdictions are not parties to regular sales and use tax refund and audit cases and BOE is not required to inform them of a pending deallocation. Determining whether a jurisdiction should be informed of a pending deallocation will be a manual process for staff when it is preparing refund cases for Board calendar.² To minimize the additional workload, staff believes that if the Board wants to implement this new procedure, the threshold for informing a jurisdiction should be when that jurisdiction will be deallocated \$100,000 or more in local tax as a result of a refund or credit in an audit. Staff and interested parties agree that the jurisdiction be informed when the Public Agenda Notice with the pending refund calendared for Board Member approval is posted.

Forms BOE-549-L and BOE-549-S. These forms are used to file petitions for local tax reallocations. Staff and interested parties have discussed proposed revisions to these forms such as adding fields for email addresses, additional contact information, etc. These forms are being revised by AG and suggestions made by HdL and MuniServices during the interested parties process have been forwarded to AG. In their submissions, HdL and MuniServices reiterate their desire to be involved in the revision of

² BOE Rules for Tax Appeals Regulation 5237 provides that if staff determines that a refund in excess of \$100,000 (total tax) should be granted, the recommendation for the proposed refund must be submitted to the Board for approval. The refunds discussed in both staff's and interested parties' proposals will exceed this total tax amount.

these forms. AG staff is aware of this request and will continue to work with the interested parties as these forms are revised.

Revisions to AG Training. In addition to the proposed CPPM procedures, staff and interested parties discussed a number of revisions to the AG staff training procedures to provide additional guidance to BOE staff when investigating local tax reallocation cases. (See [Second Discussion Paper](#), p. 5.) Staff and interested parties agree on these changes, except for one issue. MuniServices believes that if a jurisdiction or its representative has questions for a non-cooperative taxpayer, there should be a formal process in place for MuniServices to submit those questions to BOE staff, and absent compelling circumstances, for staff to be required to forward those questions to the taxpayer as part of staff's investigation. Staff believes it should be free to conduct its investigation independently without requirements imposed by jurisdictions and will continue to train its staff accordingly. Of course, if a jurisdiction has tried, but has been unable to obtain answers to specific questions from the taxpayer, the jurisdiction may send those questions to staff. AG staff will review the questions for consideration in conducting its investigation.

VI. Alternative 1 - Staff Recommendation

Approve CPPM revisions as proposed by staff in Exhibit 2.

A. Description of Alternative 1

Staff recommends that Sections 901.000 through 907.000 of CPPM Chapter 9, *Miscellaneous*, be revised as provided in Exhibit 2. Staff's recommendation:

- Includes a proposal to raise the minimum threshold for processing fund transfers from \$50 per quarter to \$250 per quarter.
- Provides a procedure for BOE to inform jurisdictions as a courtesy when a pending refund or credit in an audit results in a deallocation of \$100,000 or more in local tax to a jurisdiction.
- Includes other procedures that are disagreed with by MuniServices including, the requirement that a designated person provide a copy of its contract with the jurisdiction, deadlines for AG to acknowledge submissions and follow up on aged assignments, and the CPPM language and procedures for establishing a Date of Knowledge.

B. Pros of Alternative 1

- Staff believes the proposed threshold increase for processing fund transfers is a cost effective measure that will allow additional staff time to investigate larger claims. The proposed \$250 per quarter threshold is also consistent with the current threshold for processing a reallocation when an error is discovered in an audit.
- If the Board decides to inform jurisdictions of pending deallocations, staff's proposed \$100,000 threshold is high enough that it will not negatively impact staff workload.
- Staff's requirement that the representative provide a copy of its contract with a jurisdiction will ensure that staff only releases records to designated persons that have met the requirements of RTC section 7056.
- The review and follow-up timeframes proposed by staff are reasonable and consistent with other BOE procedures.

C. Cons of Alternative 1

- Some interested parties do not believe that BOE has the authority to impose or alter the threshold for submitting local tax reallocation petitions. Interested parties also believe staff's proposed increase is too high and would negatively impact smaller cities.
- Interested parties believe BOE should inform jurisdictions of pending large deallocations at a lower threshold in fairness to smaller jurisdictions.

D. Statutory or Regulatory Change for Alternative 1

No statutory or regulatory change required.

E. Operational Impact of Alternative 1

Staff believes its proposal to raise the threshold for processing non-TAC fund transfers to \$250 per quarter will improve staff's processing time for larger reallocation petitions.

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the revised manuals and training materials is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Staff believes the overall impact of its proposed procedures is minimal to taxpayers and jurisdictions. Interested parties believe that small jurisdictions will be harmed by staff's proposed \$250 threshold for processing non-TAC fund transfers.

H. Critical Time Frames of Alternative 1

None.

VII. Alternative 2

Approve CPPM revisions as recommended by HdL.

A. Description of Alternative 2

HdL discusses its proposed revisions to CPPM Chapter 9 in Exhibit 3. HdL agrees with staff's proposal (Alternative 1) except it:

- Opposes staff's proposed threshold increase for processing fund transfers and suggests an alternative amount of \$100 per quarter.
- Proposes that BOE inform jurisdictions as a courtesy when a proposed refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

B. Pros of Alternative 2

- The proposed \$100 threshold would reduce staff time spent on small petitions, while taking into consideration the cumulative effect of increase on petitions from small jurisdictions.
- Jurisdictions will be better able to make financial adjustments if they are informed of a pending deallocation of \$50,000 or more in local tax as the result of a refund or credit in an audit.

FORMAL ISSUE PAPER 12-002**C. Cons of Alternative 2**

- Does not achieve the full staff savings estimated in staff's proposed \$250 threshold.
- Increases staff workload to determine whether a jurisdiction may be deallocated \$50,000 or more in local tax as a result of a refund or credit in an audit.

D. Statutory or Regulatory Change for Alternative 2

No statutory or regulatory change required.

E. Operational Impact of Alternative 2

Staff believes raising the threshold for processing non-TAC fund transfers to \$100 per quarter will improve staff's processing time for larger reallocation petitions.

F. Administrative Impact of Alternative 2**1. Cost Impact**

The workload associated with publishing the revised manuals and training materials is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Staff believes the overall impact of proposed procedures is minimal to taxpayers and jurisdictions.

H. Critical Time Frames of Alternative 2

None.

VIII. Alternative 3

Approve CPPM revisions as recommended by MuniServices.

A. Description of Alternative 3

MuniServices recommends CPPM Chapter 9 be revised as discussed in Exhibit 4. MuniServices:

- Opposes staff's proposed threshold increase for processing fund transfers and recommends the threshold be \$50 per quarter or \$250 for the entire period in dispute, whichever is less.
- Disagrees with the requirement in staff's proposal that a person designated by a jurisdiction as its representative must provide a copy of its contract with that jurisdiction.
- Believes that the time for AG to acknowledge receipt of a submission should be shortened from 30 days to seven.
- Adds language stating that when establishing a Date of Knowledge, staff must include the information required under Regulation 1807 that supports the probability of a misallocation. That information should also include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact.
- Believes that the follow-up time on aged assignments in AG should be shortened. It proposes the AG lead follow up on any assignments aged 90-180 days and the AG supervisor follow up on assignments aged greater than 180 days.

FORMAL ISSUE PAPER 12-002

- Proposes that BOE inform jurisdictions as a courtesy when a proposed refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

B. Pros of Alternative 3

- The proposed cumulative threshold will allow jurisdictions to submit petitions for smaller corrections, because they will no longer have to meet the current \$50 per quarter threshold.
- MuniServices believes the proposed shortened deadlines will result in faster review and investigation of petitions.
- Jurisdictions will be better able to make financial adjustments if they are informed of a pending deallocation of \$50,000 or more in local tax as the result of a refund or credit in an audit.

C. Cons of Alternative 3

- Not including the requirement that the representative provide a copy of its contract with a jurisdiction will jeopardize BOE's ability to comply with the requirements of RTC section 7056 regarding the protection of taxpayer records.
- Staff believes it is not cost effective to continue to investigate petitions for very small amounts. Staff time would be better spent working on larger petitions.

D. Statutory or Regulatory Change for Alternative 3

No statutory or regulatory change required.

E. Operational Impact of Alternative 3

Staff believes the proposed \$250 cumulative threshold for processing fund transfers will increase the number of petitions received and slow down staff's processing time for all reallocation petitions.

F. Administrative Impact of Alternative 3

1. Cost Impact

The workload associated with publishing the revised manuals and training materials is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 3

Staff believes the overall impact of proposed procedures is minimal to taxpayers and jurisdictions.

H. Critical Time Frames of Alternative 3

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: March 6, 2012

REVENUE ESTIMATESTATE OF CALIFORNIA
BOARD OF EQUALIZATION

Proposed procedure manual revisions regarding local and district tax reallocations

Issue

Proposed updates to the Board of Equalization (BOE) manuals to incorporate guidelines and procedures related to local and district tax reallocations, including petitions for reallocations.

II. Alternative 1 - Staff Recommendation

Staff recommends that Sections 901.000 – 906.000 of Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous*, be rewritten as provided in Exhibit 2. Except for provisions in Sections 901.020 - 901.040, 905.010 – 905.050, and 907.000, HdL Companies (HdL) and Muni Services, LLC (MuniServices) agree with staff's proposed revisions. Staff's recommendation includes the following areas that interested parties disagree with:

- A proposal to raise the minimum threshold for processing fund transfers to from \$50 per quarter to \$250 per quarter.
- A procedure for BOE to inform jurisdictions as a courtesy when a pending refund or audit results in a deallocation of \$100,000 or more in local tax to a jurisdiction.
- Other procedures including, the requirement that a designated person provide a copy of its contract with the jurisdiction, deadlines for the Allocation Group (AG) to acknowledge submissions and follow up on aged assignments, and the CPPM language and procedures for establishing a Date of Knowledge.

III. Other Alternatives Considered

Alternative 2 – HdL Recommendation

In addition to the areas agreed upon with staff, HdL discusses its proposed revisions to CPPM Chapter 9. HdL:

- Opposes staff's proposed threshold increase for processing fund transfers and suggests an alternative amount of \$100 per quarter.

- Proposes that BOE send a courtesy notification to jurisdictions when a proposed refund or audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

Alternative 3 – MuniServices Recommendation

In addition to the areas agreed upon with staff, MuniServices recommends CPPM Chapter 9 be revised. MuniServices:

- Opposes staff's proposed threshold increase for processing fund transfers and recommends the threshold be \$50 per quarter or \$250 for the entire period in dispute, whichever is less.
- Proposes that BOE send a courtesy notification to jurisdictions when a proposed refund or audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.
- Disagrees with the requirement in staff's proposal that a person designated by a jurisdiction as its representative must provide a copy of its contract with that jurisdiction.
- Believes that the time for the Allocation Group (AG) to acknowledge receipt of a submission should be shortened from 30 days to seven.
- Adds language stating that when establishing a Date of Knowledge, staff must include the information required under Regulation 1807 that supports the probability of a misallocation. That information should also include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact.
- Believes that the follow up time on aged assignments in AG should be shortened. They propose the AG lead follow up on any assignments aged 90-180 days and the AG supervisor follow up on assignments aged greater than 180 days.

The cities of San Joaquin, Delano, Santa Ana, Fullerton, Belmont, Napa, Solvang, Riverbank, Ridgecrest, Modesto, Villa Park, San Jose, Folsom, San Diego, and Roseville also oppose increasing the threshold for processing fund transfers.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact sales and use tax revenue. The staff recommendation proposes a threshold increase for processing fund transfers. Staff asserts that increasing the threshold is a cost effective measure that will free up staff time to investigate larger claims. The proposed \$250 per quarter threshold is also consistent with the current threshold for processing a reallocation when an error is discovered in an audit. In addition, the staff recommendation specifies that if the Board decides to inform jurisdictions of pending deallocations, staff's proposed \$100,000 threshold is high enough that it will not negatively impact staff workload. Further, staff's requirement that representatives provide a copy of the

contract with a jurisdiction will ensure that staff only releases records to designated persons that have met the requirements of RTC section 7056. Finally, staff believes that the review and follow-up timeframes proposed by staff are reasonable and consistent with other BOE procedures.

Other Alternatives Considered

Alternative 2 - HdL Recommendations

There is nothing in alternative 2 that would impact sales and use tax revenue. HdL opposes staff's proposed threshold increase for processing fund transfers and suggests an alternative amount of \$100 per quarter. In addition HdL proposes that BOE send a courtesy notification to jurisdictions when a proposed refund or audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

Alternative 3 – MuniServices Recommendation

There is nothing in alternative 3 that would impact sales and use tax revenues. MuniServices opposes staff's proposed threshold increase for processing fund transfers and recommends the threshold be \$50 per quarter or \$250 for the entire period in dispute, whichever is less. In addition, it disagrees with the requirement in staff's proposal that a person designated by a jurisdiction as their representative must provide a copy of their contract with that jurisdiction. Also, it is the belief of MuniServices that the time for the Allocation Group (AG) to acknowledge receipt of a submission should be shortened from 30 days to seven. Further, MuniServices suggests adding language stating that when establishing a Date of Knowledge, staff must include the information required under Regulation 1807 that supports the probability of a misallocation. That information should also include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact. It also believes that the follow-up time on aged assignments in AG should be shortened. MuniServices proposes the AG lead follow up on any assignments aged 90-180 days and the AG supervisor follow up on assignments aged greater than 180 days. Finally, MuniServices proposes that BOE send a courtesy notification to jurisdictions when a proposed refund or audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Other alternatives considered.

Alternative 2 – HdL recommendation does not have a revenue impact.

Alternative 3 – MuniServices recommendation does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, and Ms. Susanne Buehler, Tax Policy Chief, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of March 5, 2012.

Sections 901.000 through 906.000 of CPPM Chapter 9 at <http://www.boe.ca.gov/sutax/manuals/cpm-09.pdf> are hereby deleted and replaced with **Sections 901.000 through 907.000, as provided in this exhibit.**

LOCAL TAXING JURISDICTION REVIEW OF BOARD OF EQUALIZATION RECORDS

901.000

BACKGROUND

901.010

Revenue and Taxation Code (RTC) section 7056(b) allows authorized officers, employees, and designated persons of jurisdictions imposing taxes under the Uniform Local Sales and Use Tax Law (RTC section 7200, et seq.) and jurisdictions imposing taxes under the Transactions and Use Tax Law (RTC section 7251, et seq.) (commonly known as “district taxes”) to view the confidential records of the Board of Equalization (BOE) pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdictions they represent. For an authorized officer, employee, or designated person to gain such access to BOE’s confidential records, the legislative body of the jurisdiction must adopt a resolution designating the representative as a person authorized to view such confidential records on the jurisdiction’s behalf. Unless the person so designated is an authorized officer or employee of the jurisdiction, the resolution must certify that the designated person has an existing contract with the jurisdiction to examine records of BOE pertaining to the ascertainment of the sales or transactions and use taxes to be collected by the BOE on the jurisdiction’s behalf. The resolution must also certify that the contract between the jurisdiction and the person designated by the resolution has met all of the following conditions:

1. Is required by the contract to disclose information contained or derived from those confidential records only to an officer or employee of the jurisdiction who is also authorized by the resolution to examine the records;
2. Is prohibited by the contract from performing consulting services for a retailer during the term of that contract; and
3. Is prohibited by the contract from retaining the information contained in or derived from the confidential records after that contract has expired.

RTC section 7056(b)(2) further provides that information obtained by examination of BOE’s records may be used only for purposes related to the collection of the local or district tax pursuant to the contract, or for purposes related to other governmental functions of the jurisdiction as set forth in the jurisdiction’s resolution.

INFORMATION SUBJECT TO DISCLOSURE

901.020

The Local Revenue Allocation Unit (LRAU) is responsible for determining whether the legislative body of a local jurisdiction has adopted a valid resolution authorizing an officer, employee, or designated person to view confidential taxpayer records pursuant to RTC section 7056. A duly authorized officer, employee or designated person of a local jurisdiction may only examine all of the sales or transactions and use tax records of the BOE pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the county, city and county, city, or district that person represents. This means the duly authorized officer, employee or designated person of a county, city and county, or city will be given access to file information for (1) taxpayers with retail sales locations within the boundaries of the jurisdiction, (2) taxpayers

whose local tax was allocated to the jurisdiction by BOE, (3) taxpayers reporting tax to that jurisdiction's countywide pool, and (4) taxpayers reporting tax to the statewide pool. A county, city and county, or city is entitled to information from the countywide and statewide pools because the jurisdiction shares in those taxes. For example, a duly authorized officer, employee, or designated person of the City of Sacramento shall be given access to file information for taxpayers with retail sales locations in, or local tax allocated to the City of Sacramento and may review the file of a taxpayer reporting local tax to the County of Sacramento's countywide pool and the statewide pool.

A duly authorized officer, employee, or designated person of a district shall be given access to the district tax allocation file for that district. A district with boundaries coterminous with county boundaries may obtain the countywide pool data for the county in which the district is located. Authorized officers, employees, or designated persons of a district encompassing more than one county (such as the Bay Area Rapid Transit District) may obtain the countywide pool data for each county with boundaries coterminous with that district. A district's duly authorized officer, employee, or designated person is not authorized to view statewide pool data.

Before allowing a person access to confidential taxpayer information, the Allocation Group (AG) and field offices, must verify with LRAU that a person seeking access to confidential records on behalf of a jurisdiction imposing local or district tax is authorized by a valid resolution of that jurisdiction. If the person is a designated person of the jurisdiction, the AG and field offices must also verify that the designated person has an existing contract with that jurisdiction. This verification may be done by checking the current LRAU Resolution Log or by telephone or email. If LRAU does not have a copy of the required authorizing document(s) on file, the person must provide a certified copy of such document(s), which should be faxed or scanned and emailed by AG or the field office to LRAU. LRAU will verify that the document(s) meets all the administrative criteria required to authorize the person to view confidential records. If the documents do *not* meet the criteria, the person must be advised that, pending receipt of the applicable document(s), access to confidential file material will be denied.

Questions regarding the validity of resolutions, contracts, or other RTC section 7056 authorization issues should be directed to LRAU.

REQUEST TO REVIEW SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED BY HEADQUARTERS

901.030

Requests by jurisdiction representatives to review taxpayer records should be forwarded to AG for processing. AG will verify that a valid resolution and contract are on file and will order the requested files from the Taxpayer Records Unit for review. AG will then review each file to locate and remove any information not subject to disclosure prior to presenting the file to the requester for review.

The requester will be required to complete a Form BOE-755, *Authorized Examination of Board Records*, for each file reviewed. The completed BOE-755 should detail the specific documents reviewed, including the time period of returns or other documents. Each completed BOE-755 will then be included in the taxpayer's file.

AG will provide space for the requester's examination of files in an observable area. Upon request, AG will also make copies of file material at no charge.

REQUEST TO REVIEW SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED AT A FIELD OFFICE

901.040

Requests for records maintained at the field office should be forwarded to either the District Principal Auditor or the District Principal Compliance Supervisor, who will confirm with LRAU that a valid resolution and contract are on file. Audit or compliance staff, when contacted directly by a person seeking access to taxpayer records on a jurisdiction's behalf, will inform and consult with the District Principal Auditor or District Principal Compliance Supervisor before acting on the request.

If the request concerns the examination of a field office file and such file exists, a review of that file will be made to locate and remove any material not subject to disclosure prior to presenting the file to the requester for review. The requester will be given access only to the field office files that pertain to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction it is determined to represent. Care will be taken to ensure that the requester is given access only to taxpayer records that pertain to the authorizing jurisdiction.

The requester will complete a BOE-755 for each file reviewed. The completed form should detail the specific documents reviewed and include the time period of tax returns and/or dates of other documents.

The field office will provide space for the examination of files by the requester in an observable area. Upon request, the field office will also make copies of file material at no charge.

The original BOE-755, completed at the field office, will be sent to the taxpayer's file maintained by headquarters. A copy of the form may be included in the taxpayer's field office file.

INFORMATION NOT SUBJECT TO DISCLOSURE

901.050

Information not subject to disclosure includes:

1. Memoranda to or from the Legal Department marked "Confidential: Attorney — Client Privilege." (See explanation below regarding documents incorrectly marked, or not marked, as confidential.)
2. Memoranda directly related to litigation in which the BOE is a party, including refund and collection actions.
3. Memoranda to or from the Attorney General's office when the Attorney General is acting as the BOE's attorney.
4. Documents which relate to an ongoing criminal investigation.
5. Federal or state income tax returns or any item marked as Federal Tax Information.
6. Any information in the taxpayer's file that does not pertain to that taxpayer.

Internal memoranda, other than those specified above, are normally not to be regarded as confidential unless so marked. However, some documents may not be appropriately marked as confidential. If you question whether a document has been appropriately marked as confidential, or believe that a document should be so marked, contact the author of the document, the BOE's Disclosure Officer, or the Legal Department for guidance.

REQUEST FOR TAXPAYER RECORDS IN IRIS AND ACMS

901.060

There are no circumstances under which a jurisdiction's representative may be given unrestricted or unsupervised access to the IRIS or ACMS systems. In order to request records concerning specific taxpayer payments, the requester must complete a BOE-755, for each IRIS or ACMS account and specify the documents or confidential information being requested. When completed properly, BOE-755 meets the accounting requirements of the Information Practices Act, Civil Code section 1798.25.

Each BOE-755 must be verified to ensure that the requester is authorized to receive information pursuant to the Board of Equalization Administrative Manual sections 7207 – 7214 or RTC section 7056. The requestor must sign and date the BOE-755.

If a request is made, a BOE employee will access the requested information, e.g., 2QXX local tax breakdown, and print out the information for the representative as specified on the BOE-755.

PROCESS FOR REVIEWING LOCAL TAX REALLOCATION PETITIONS

905.000

Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, applies to appeals from petitions of suspected improper distributions of district tax under the Transactions and Use Tax Law. The provisions of Regulation 1828 are essentially identical to Regulation 1807; for convenience, this CPPM chapter only refers to Regulation 1807.

DEFINITIONS

905.010

Petition

A “petition” is a written request or inquiry from a jurisdiction for investigation of suspected misallocation of local tax or district tax submitted to AG, except for a submission under RTC section 6066.3. (See CPPM 905.090 for RTC section 6066.3 submissions.) The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

1. Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.
2. Taxpayer's permit number or a notation stating "No permit number."
3. Complete business address of the taxpayer.
4. Complete description of taxpayer's business activity or activities.
5. Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or is a place of business, as defined by Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*. If the petition alleges that the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.
6. Name, title, and phone number of the contact person.
7. The tax reporting periods involved.

“Petition” also includes an appeal by a jurisdiction based on a notification from LRAU that local taxes or district taxes previously allocated to it were misallocated and will be reallocated. If LRAU has a valid resolution and contract on file authorizing a representative of the jurisdiction to view confidential taxpayer information under RTC section 7056, LRAU will also send this notification to that representative.

A jurisdiction receiving such a LRAU notification may object to that notification by submitting a written petition to the AG supervisor within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification by LRAU is considered final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from LRAU. Such a request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by LRAU within 30 days of the date of mailing of its notification. Within five days of receipt of the request, LRAU will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of LRAU is further extended to the 60th day after the date of mailing of the notification of misallocation.

Substantially Affected Jurisdiction

A “substantially affected jurisdiction” is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools. How jurisdictions are identified as substantially affected based on disputed pool allocations is discussed below.

Notified Jurisdiction

A “notified jurisdiction” is a jurisdiction that has been notified as a substantially affected jurisdiction. Once a jurisdiction is properly notified as a substantially affected jurisdiction, it maintains its status as a notified jurisdiction throughout the appeals process.

Note that the reallocation period may extend to the current day if the subject taxpayer remains engaged in the same activities covered by the petition, in which case, for purposes of this calculation, the reallocation period is regarded as extending through the end of the last quarter for which a return is filed prior to the finality date of the appeal. In such circumstances, the longer the appeals process takes to resolve, the more local tax will be at issue. Thus, a jurisdiction that is not substantially affected at one point in the appeals process can later become a substantially affected jurisdiction as the petition is appealed and time passes. For example, a jurisdiction that is not substantially affected when AG issues its supplemental decision may be substantially affected, and thus notified, at the time when the Decision and Recommendation is issued. Similarly, if a hearing is timely requested, a jurisdiction that is not notified as a substantially affected jurisdiction when the oral hearing notice is issued may later become substantially affected because the oral hearing is postponed or rescheduled and thus requires notification. Further, a jurisdiction not previously notified as substantially affected, will be notified if it becomes substantially affected upon discovery of an error in the original notice, or upon granting a petition for rehearing when the notice for rehearing is issued.

For a reallocation that would be made of amounts originally allocated through a countywide pool, the calculation of whether a jurisdiction must be notified as a substantially affected jurisdiction is not based on the actual amount that was originally allocated to that jurisdiction through its countywide pool, or on the amount that may be reallocated if the ultimate decision is to reallocate funds, but rather is based on the “Pool Notification Threshold List” maintained and updated annually by LRAU. This list will be posted to the BOE’s website each calendar year as soon as it is available.

This document lists, for each jurisdiction, the amount of countywide pool funds whose reallocation would result in the loss of sufficient revenue by that jurisdiction for it to constitute a

substantially affected jurisdiction. The calculation is based on the average percentage of the countywide pool the jurisdiction received for the four calendar quarters of the year prior to the year of the list (e.g., the 2011 list is based on the four calendar quarters of 2010). That percentage is then used to determine the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of \$50,000, and the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of 5 percent or more of its average quarterly allocation (also based on the four calendar quarters prior to the year of the list). The lower of these two figures is the dollar amount of pool funds whose reallocation would result in that jurisdiction's being substantially affected, and is the amount used for that jurisdiction in establishing the Pool Notification Threshold List.

The first step in determining which jurisdictions must be notified because they are substantially affected by a decision is to determine the amount of funds from the applicable countywide pool that the decision recommends be reallocated. If the amount to be reallocated is equal to or greater than the threshold amount, that jurisdiction will be substantially affected by the decision and must be notified. For example, AG issues a decision finding that a petition should be granted reallocating \$1,070,000 of County A's pool funds. AG will review the County Pool Notification Threshold List for the jurisdictions sharing in County A's pool funds. If \$1,070,000 is equal to or greater than the threshold amount reflected on the list for a jurisdiction, AG would notify that jurisdiction. Thus, a jurisdiction with a pool threshold amount of \$1,000,000 would be notified, but a jurisdiction with a pool threshold amount of \$2,000,000 would not be notified. (The same analysis is done to decide who must be notified of an appeals conference or Board hearing, except the comparison is to the amount of pool funds that would be reallocated if the petition is granted or denied.)

Thereafter, if a decision to reallocate funds originally allocated through a countywide pool becomes final, the actual amount reallocated will be based on the percentage of the pool that each pool participant receives for the quarter prior to the quarter in which the reallocation is made. Upon request, the petitioner or any substantially affected jurisdiction will be furnished copies of the calculations made to determine the parties to be notified.

SUBMITTING PETITIONS

905.020

To expedite processing, requests should be submitted by the petitioning jurisdiction or its authorized representative, who is submitting on behalf of the jurisdiction, on Form BOE-549-L, *Claimed Incorrect Distribution of Local Tax - Long Form*, or Form BOE-549-S, *Claimed Incorrect Distribution of Local Tax - Short Form*. Form BOE 549-L is used for complex local tax reallocation issues such as sales tax vs. use tax, place of sale, or other complex issues where more information is needed. Form BOE 549-S is used for simple tax reallocation questions having to do with taxpayers' business addresses or other less complex matters. These forms are available on the BOE website. The minimum threshold for processing fund transfers is \$250 per quarter.

The exception to this threshold amount is for tax area code (TAC) changes. When there is a change to the TAC assigned to a taxpayer's address, BOE's computer system will automatically process fund transfers for periods that have been funded within two quarters prior to the date of the change regardless of whether the threshold was met in those quarters.

All petitions are to be sent directly to headquarters, rather than to a field office. Petitions should be mailed to:

Allocation Group
Board of Equalization
450 N Street, MIC 39
PO Box 942879
Sacramento, CA 94279-0039

Petitions may also be submitted by fax to AG at (916) 445-2249.

(For submissions under RTC section 6066.3, see CPPM 905.090.)

ACKNOWLEDGMENT AND REVIEW OF SUBMISSIONS

905.030

AG will log in and acknowledge submissions intended as petitions via email within 30 calendar days of receipt by the Board. Petitions will be logged in by date, permit number (if any), jurisdiction (if known), and representative (if any). AG will review submissions for completeness and absent extraordinary circumstances, within 30 calendar days of the acknowledgement of receipt, AG should send the submitting jurisdiction an acknowledgement that the submission was accepted as a valid petition, or return the submission, as discussed below. If the submission does not contain the elements identified in Regulation 1807(a)(3), the submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from AG requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements in Regulation 1807(a)(3), then the date of receipt of the original submission will be regarded as the date the BOE received a valid petition. In the event that a submission is not perfected within this 30 day period, the submission will not qualify as a valid petition.

DATE OF KNOWLEDGE

905.040

Unless an earlier date is operationally documented by the BOE, the date AG receives a valid petition is the "date of knowledge," which is a date that is critical for determining the beginning of the allocation period. (RTC section 7209 (statute of limitations for these petitions)). Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge remains the date AG received the valid petition.

A potential misallocation is "operationally documented" when a BOE employee questions the allocation based on information contained in the Board files *and* provides sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. In other words, a date of knowledge is operationally documented when two conditions are satisfied: (1) an employee of the Board discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and (2) the Board employee questions and documents that suspected erroneous allocation. The operationally documented date of knowledge will be the date the employee documents the date on which the distribution was questioned, such as the date the employee issues a BOE-75 form, *LRAU Goldenrod* and references the data that supports the suspected misallocation. An LRAU goldenrod is an internal form used by LRAU to record questionable local and/or district tax distributions, fund transfer approvals, and reallocation notifications.

If a petition regarding suspected improper distribution of local tax under the procedures set forth above and a submission under RTC section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed as a valid appeal, with its date of receipt establishing the date of knowledge for the alleged improper distribution (unless there is an even earlier operationally documented date of knowledge).

REVIEW BY SALES AND USE TAX DEPARTMENT

905.050

Investigation

Petitions will be coded for type of alleged misallocation and assigned to an auditor in AG. Assignments may coincide with investigations handled by LRAU. (Note that for assignments coinciding with investigations handled by LRAU, the LRAU Supervisor may be consulted.)

AG staff will use the BOE-414-Z, *Assignment Activity History*, to record contacts, requests, staff actions, and other relevant events. For example, the BOE-414-Z should be used to record:

- Appointments made – record date, time, and purpose of the appointment.
- Appointments cancelled or rescheduled – record who requested the change and the reason for the request.
- Correspondence – record all letters and other materials given to and received from jurisdictions and taxpayers.
- Emails – record email contacts including a summary of the discussion or agreement; emails should not be copied directly into the BOE-414-Z.
- Record requests – record all requests for records from taxpayers including the deadline given (usually 45 days).
- Referral to field office – record date referred and appropriate follow-up date (30 days for in-state field offices and 60 days for out-of-state field offices).

The auditor will attempt to resolve all petitions through communication with the taxpayers including contacting the "contact person" identified in the petition or other such taxpayer personnel. If for some reason a satisfactory response cannot be obtained, the petition may be referred to the appropriate field office for action. The petition will be discussed with the AG supervisor and the petitioner will be notified before a petition is referred to a field office. Referrals to the field office will include specific instructions to field office staff for the information sought. A copy of any correspondence will be sent to the petitioner.

The AG lead and AG supervisor will review the status of petitions as the petitions age. The AG lead will follow-up monthly with staff for any assignments aged 180 - 270 days. The AG supervisor will follow up on assignments aged greater than 270 days.

Initial Decision

After a petition has been investigated, AG will prepare a written decision to grant the petition, deny the petition, or grant the petition in part and deny it in part. The written decision will include the basis for that decision and the date of knowledge, and if that date is other than the date the petition was received, will include the basis for that date. AG will send its decision to the petitioner and, if applicable, any substantially affected jurisdiction.

If a petition is denied, in whole or in part, the petitioner may submit to AG a written objection to the decision, and if the petition is granted, in whole or in part, a notified jurisdiction may likewise submit to AG a written objection to the decision. Any such objection must be submitted within

30 days of the date of mailing of AG's decision, or within a period of extension as explained below.

If no timely objection is submitted, the AG decision is final as to the petitioner and all notified jurisdictions.

Delayed Investigation – Petitioner's Recourse

If AG does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that AG issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, AG will issue its decision based on the information in its possession.

Second Review by AG

If the petitioner or a notified jurisdiction submits a timely written objection to the AG decision, AG will consider the objection and issue a written supplemental decision to grant the objection, deny the objection, or grant the objection in part and deny it in part, along with the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

The petitioner or any notified jurisdiction may appeal the AG supplemental decision by submitting a written objection to AG within 30 days of the date of mailing of the supplemental decision (or within a period of extension as explained below). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position. If the petitioner or any notified jurisdiction timely appeals the AG supplemental decision, AG will prepare the file and forward it to the Appeals Division within 30 days of receipt of the objection.

If no timely objection is submitted, the AG supplemental decision is final as to the petitioner and all notified jurisdictions.

Delayed Investigation – Petitioner's and Notified Jurisdictions' Recourse

If AG does not issue a supplemental decision within three months of the date it receives a timely objection to the AG decision, the petitioner or any notified jurisdiction may request that AG issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, AG will issue its supplemental decision based on the information in its possession.

Extensions of time

The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection to either a decision or supplemental decision issued by AG. The request must:

1. Provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days,
2. Be copied to all other jurisdictions to whom AG mailed a copy of its decision or supplemental decision, and
3. Be received by AG within 30 days of the date of the decision or supplemental decision.

Within five business days of receipt of the request, AG will mail notification to the petitioner and all notified jurisdictions whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection is extended to the 60th day after the date of the mailing of AG's decision or supplemental decision. If the request for extension is denied, the time for the petitioner and any notified jurisdiction to file an objection to AG's decision or supplemental decision is extended to 10 days after the mailing of the notice denying the extension.

REVIEW BY APPEALS DIVISION

905.060

If a timely objection to the supplemental decision has been submitted, AG will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The Appeals Division will coordinate with the Case Management Section of the Board Proceedings Division, who will schedule the appeals conference and mail notice of that conference to the petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted or denied, and AG. Generally, appeals conferences are scheduled in the order received by the Appeals Division.

Return of Petition to AG

The petitioner or any notified jurisdiction may continue to discuss the dispute with AG staff after the petition is referred to the Appeals Division. If, as a result of such discussions or otherwise, AG decides its supplemental decision was incorrect or that further investigation is warranted, it will so notify the Appeals Division, the petitioner, and all notified jurisdictions.

If AG sends such notice to the Appeals Division no later than 30 days prior to the appeals conference, the Appeals Division will suspend its review and will return the petition to AG. Thereafter, AG will issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

If AG sends such notice to the Appeals Division less than 30 days prior to the appeals conference, the Appeals Division will decide whether the petition should be returned to AG or should remain with the Appeals Division, and will notify the parties accordingly. If the petition is returned to AG, AG will thereafter issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

Where AG issues a second supplemental decision, it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection within 30 days of the date of mailing of that supplemental decision, or within a period of authorized extension. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

Appeals Conference

The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and AG have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. See Regulation 1807(c)(3) for procedures for local tax appeals.

Decision and Recommendation

The appeals conference holder will notify the conference participants when the final submission of information authorized by Regulation 1807(c)(3) is received following the appeals conference. Within 90 days after the final submission, the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law, and the conclusions of the Appeals Division. The BOE's Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and AG. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to AG.

Request for Board Hearing

The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing within 60 days of the date of mailing of the D&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R and include all additional information in its possession that supports its position.

Request for Reconsideration

The petitioner, any notified jurisdiction, or AG may also appeal the D&R by submitting a written request for reconsideration (RFR) to the Appeals Division within the same 60-day period during which a timely request for hearing may be submitted. If an RFR is submitted within this period, the Appeals Division will issue a Supplemental D&R (SD&R) to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. Where a Board hearing has been timely requested and an RFR is submitted more than 60 days after the mailing of the D&R, the Appeals Division will determine whether it should issue an SD&R in response. If not, a Board hearing will be held pursuant to the prior request.

Supplemental Decision and Recommendation

Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by AG as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R. However, in the rare circumstance where the members of the Board at an oral hearing request that the Appeals Division hold another conference, the Appeals Division will issue an SD&R.

Where the Appeals Division issues an SD&R (whether because an RFR was filed within 60 days of the mailing of the D&R or a prior SD&R or because the Appeals Division decides issuance of an SD&R is appropriate in response to a "late" RFR or on its own initiative), a copy of the SD&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to AG. The procedures for appealing the SD&R (i.e., requesting a Board hearing or reconsideration) are the same as those for appealing a D&R.

Finality of D&R or SD&R

If no RFR or request for Board hearing is submitted within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R (as applicable) is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues a SD&R prior to the time AG acts on the recommendation in the D&R or prior SD&R as a final matter.

REVIEW BY BOARD MEMBERS

905.070

If the petitioner or any notified jurisdiction submits to the Board Proceedings Division a timely written request for Board hearing (i.e., within 60 days of the date of mailing of the D&R or SD&R) the Board Proceedings Division will notify AG, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

AG, the petitioner, and all jurisdictions notified of the Board hearing are parties to the Board hearing. The taxpayer, however, is not a "party" to the Board hearing unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing.

To the extent not inconsistent with Regulation 1807, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Regulations 5510 - 5576). Briefs may be submitted for the hearing in accordance with the Rules for Tax Appeals (Regulations 5270 - 5271). (Note that no party to the hearing is required to file a brief; submission of a brief is entirely optional.) The party who requested the Board hearing may file an opening brief with the Chief of Board Proceedings no later than 55 days before the Board hearing. The brief must contain a statement of the facts and issues and a discussion of applicable legal authorities. When an opening brief is filed, the other party may file a reply brief with the Chief of Board Proceedings no later than 35 days before the Board hearing.

Only the jurisdiction(s) requesting the hearing can file an opening brief, and AG and any opposing jurisdiction(s) may file a reply brief only if the jurisdiction requesting the hearing or taxpayer actually files an opening brief. Since a taxpayer is specifically authorized by Regulation 1807, subdivision (d)(3), to become a party by filing a brief, a taxpayer may file a brief even though it is never the party who requested a hearing in reallocation matters and even if the jurisdiction(s) that did request the hearing does not file an opening brief.

The filing of the opening and reply briefs generally completes the pre-Board hearing briefing. However, if, *and only if*, the reply brief raises a new issue or argument, any other party may file a response brief with the Chief of Board Proceedings no later than 20 days before the Board hearing.

The Board's decision on the petition will become final 30 days after the date notice of the Board's decision is mailed to the petitioner(s) and notified jurisdiction(s) (and the taxpayer if it is a party), unless within that 30-day period a party to the petition files a Petition for Rehearing or the Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order. A Petition for Rehearing may be filed in accordance with the Rules for Tax Appeals (Regulation 5561).

The Board's final decision on the petition exhausts all parties' administrative remedies on the matter.

LIMITATION PERIOD FOR REDISTRIBUTIONS

905.080

Redistributions (also known as reallocations) cannot be made of amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge. (RTC

section 7209, Reg. 1807(e).) It should be noted that this does *not* generally mean that the redistribution is limited to taxes incurred two quarters prior to the date of knowledge because this period is based on the date of *distribution*, not the date the tax was incurred, or the date the tax was remitted to the BOE. Generally, distributions are made the quarter following the period for which the tax is reported and paid. Taxes generally must be reported and paid by the last day of the month following the quarter incurred. Thus, the two-quarter limitation period for redistribution of local tax, which is based on the distribution date, allows redistributions of local tax *incurred* during the three quarters immediately preceding the calendar quarter of the date of knowledge.

For example, on March 15, 2008, City A files a petition for reallocation of local tax, asserting that in November 2006, a specific taxpayer who opened a business making over-the-counter retail sales in City A has not allocated any local tax to City A. AG issues a decision granting the petition based on its findings that petitioner is correct and that the taxpayer timely reported and paid local tax, but improperly allocated the tax to City B. The petition date, March 15, 2008, is the date of knowledge. Since that is in the first quarter 2008, the limitation period extends back two more quarters, to distributions made during the third quarter 2007. Since the local taxes for the second quarter 2007 were distributed during the third quarter 2007, pursuant to the decision of AG, local tax will be reallocated to City A beginning with the local taxes incurred during the second quarter 2007, beginning April 1, 2007. The local tax incurred by the taxpayer's location in City A for the periods prior to April 1, 2007 (i.e., November 2006 through March 2007) were reported and paid with the return due January 31, 2007, and April 30, 2007, and those taxes were distributed during the first and second quarters 2007, respectively, *more than two quarters* prior to the quarter of the date of knowledge. Therefore, reallocation of such taxes is barred.

The discussion above is based on the taxpayer's actual payment of tax when due. However, the BOE cannot distribute local tax until such tax is remitted by the taxpayer. Thus, where a taxpayer files a timely "non-remittance" return (without payment of the reported tax due) with all required local tax allocation schedules, there is no local tax revenue to distribute. When these funds are remitted, they will be distributed in accordance with the taxpayer's return, and it will be that date of actual distribution that is relevant for purposes of the date of knowledge analysis, *not* the date the tax was incurred. For example, using the same facts as in the prior paragraph except that the taxpayer filed a non-remittance return for the fourth quarter 2006 (November and December 2006), not paying that amount until June 15, 2007. The taxpayer timely paid the tax reported on all later returns. Thus, since the taxes incurred for the fourth quarter 2006 were not paid until June 2007, they were not distributed until the third quarter 2007, reallocation of such taxes is permitted for the date of knowledge in the first quarter 2008. However, since the taxes incurred for the next quarter (first quarter 2007) were distributed more than two quarters prior to the quarter of the date of knowledge (i.e., distributed during the second quarter 2007), reallocation of such local tax is barred.

The following schedule shows the remittance and distribution dates for a typical four-quarter period. The term "Remittance Date" means the date on which the BOE receives a taxpayer remittance. The term "Distribution Date" means the quarter in which the BOE makes payment of revenue to local jurisdictions.

<u>Remittance Date</u>	<u>Distribution Date</u>
Feb. 13 – May 13	2 nd Quarter
May 14 – Aug 13	3 rd Quarter
Aug. 14 – Nov. 13	4 th Quarter
Nov. 14 – Feb. 12	1 st Quarter

APPLICATION TO RTC SECTION 6066.3 SUBMISSIONS

905.090

The procedures set forth above are in addition to, but separate from, procedures established under the authority of RTC section 6066.3. That section authorizes each jurisdiction to collect and transmit to the BOE information from persons desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property. The information submitted serves as (1) a preliminary application for seller's permit, (2) notification to the BOE by the local jurisdiction of a person desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property, and (3) notice to the BOE for purposes of redistribution.

Where a petition regarding suspected improper distribution of local tax is filed under the procedures established under Regulation 1807 and a submission is also made under RTC section 6066.3 for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to the earliest submission. If multiple petitions are received for the same business, jurisdiction, and period, the petitions will not be considered duplicates if the petitions contain different reasons for error and therefore would be worked as separate petitions. The procedures set forth in subdivisions (b), (c), and (d) of Regulation 1807, which are discussed above, also apply to appeals from reallocation determinations made under RTC section 6066.3.

KNOWLEDGE OF INCORRECT LOCAL TAX ALLOCATIONS OTHER THAN FROM PETITIONS BY LOCAL JURISDICTIONS AND REPRESENTATIVES

906.000

FIELD OFFICE RESPONSIBILITY

906.010

As explained in CPPM 905.040, a BOE employee who discovers an error in the allocation of local tax must record the date that knowledge of the error was obtained.

If an error in the reported allocation of local tax is discovered by the field office, the auditor or field staff should confine his or her report of the necessary redistribution to amounts originally distributed within the limitation period, as explained above, which generally consists of tax reported for the three quarters immediately preceding the quarter in which the error was discovered unless the field office file contains evidence of late returns and payments on billings, in which case, the extent of the limitation period should be determined based on the schedule in CPPM 905.080. If there is any question regarding the extent of the limitation period, the auditor or field representative should contact AG for assistance. Every effort should be made to determine all amounts to be redistributed during the original field investigation. For additional instructions regarding Form BOE-414-L Auditor's Work Sheet Local Sales and Use Tax Allocation, see Audit Manual 0209.00.

HEADQUARTERS RESPONSIBILITY

906.015

Redistributions in Headquarters will be subject to the same review as redistributions that are received from field offices.

Allocation Group (AG)

In general, AG will make all redistributions of local tax and district taxes as a result of petitions from jurisdictions or their authorized representative, submitting on behalf of the jurisdiction. AG also has the responsibility to examine all reports of errors in distribution that are received from field offices (BOE audits, reaudits, field billing orders, petitions from jurisdictions, and submissions under RTC section 6066.3) and verify by an examination of the master file, or any other records in Headquarters, that the report includes all amounts within the limitation period. If this examination discloses that the limitation period extends beyond the point covered by the report and information regarding the amount to be redistributed cannot be determined from the records in Headquarters, the necessary additional information will be requested from the field office.

Local Revenue Allocation Unit (LRAU)

LRAU handles redistributions of local tax and district taxes discovered during reviews of returns, as well as redistributions resulting from corrections to the Tax Area Codes, excluding redistributions resulting from BOE audits, reaudits, field billing orders, petitions from jurisdictions (see CPPM 905.000), and submissions under RTC section 6066.3 (see CPPM 905.090). LRAU processes all field audit redistributions of district taxes submitted by field offices.

INFORMING JURISDICTIONS PRIOR TO PROCESSING A LARGE DEALLOCATION OF LOCAL TAX RESULTING FROM A REFUND OR CREDIT IN AN AUDIT

907.000

Sales and use tax refunds and credits in audits occasionally result in large deallocations of local tax to individual jurisdictions. When a pending refund or credit in an audit results in a deallocation of \$100,000 or more in local tax to a jurisdiction, the Refund Section will send a courtesy email to that jurisdiction and its authorized representative. The email will be sent when the Public Agenda Notice is published for the Board Meeting in which the pending refund is placed on calendar for Board approval. The email will be for information purposes only. Such a deallocation will not be subject to appeal by a jurisdiction or its authorized representative.



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February 1, 2012

Via electronic mail

Susanne.Buehler@boe.ca.gov
Lynn.Whitaker@boe.ca.gov
Laila.Hellmuth@boe.ca.gov

RE: Proposed Revisions CPPM Chapter 9

To whom it may concern:

HdL appreciates the opportunity afforded all affected parties to provide additional input and suggestions regarding the proposed revisions to State Board of Equalization CPPM Chapter 9. In response to the Second Discussion Paper, and to the issues raised during the January 18, 2012 Interested Parties meeting, we appreciate your consideration of the following.

1. Access to Confidential BOE Records

For over 25 years HdL has successfully worked with Local Revenue Allocation Unit (LRAU) staff in documenting our right to access confidential taxpayer records on behalf of the agencies we serve. We recognize that in order to have a Resolution of Confidentiality we must have an existing contract with the jurisdiction, and therefore do not have an issue with providing copies of both documents. While it has not been a significant issue to date, we share the concern of other interested parties that Staff may subjectively determine under Section 901.020 that either a Contract or a Resolution does not meet certain unspecified "administrative criteria". We reserve the right to challenge said determination if and when it is made.

As email correspondence and electronic filing of tax returns has become more prevalent there is now less and less "hard-copy" documentation contained within taxpayer files. Our request for taxpayer records in IRIS and ACMS has increased accordingly. We appreciate Staff's willingness to restore the provision under Section 901.060 that this information may be printed out, as opposed to "recorded" by the consultant. We ask that any future policies or provisions regarding access to electronic records preserve the same rights and privileges currently applied to hard-copy records.

2. Threshold for Manually Processing Fund Transfers

HdL strongly disagrees with Staff's proposal to raise the reallocation threshold on local and district tax petitions to \$250 per quarter. While we appreciate the impact assessment presented by the Allocation

Group (AG) in the Second Discussion Paper, we respectfully question a number of the findings and conclusions.

Staff indicates that 241 petitions were filed during the week of September 26-30, 2011. HdL filed 158 cases during that period. Of that total there were 2 non-TAC petitions (1.3%) where the local tax amount involved was below \$250. In addition, both of those cases still required a registration change so that future periods would be allocated correctly. In other words, these cases still needed to be “worked”; therefore the time savings of 8-11 hours per case by virtue of not taking the extra step of processing a fund adjustment appears considerably overstated.

In any case, we submit that our client jurisdictions, in return for the administrative fees paid, are entitled (within reason) to *all* local sales, use, and district tax owed. We believe that a \$100 limit is a reasonable compromise, and note that it is double the current threshold.

During the Interested Parties meetings the Allocation Group staff described a fairly arduous and labor-intensive system for processing prior quarter adjustments, including the need to wait overnight for certain changes to take effect before further steps can be taken. Rather than simply reducing workload at the expense of its customers perhaps the Board can achieve the equivalent or greater time savings by streamlining the process. This should include the final approval process on large adjustments, and we have on occasion seen considerable delays at this level.

3. Date of Knowledge

Many taxpayers have erratic business activities in this State, including very large one-time transactions, shipments from both within and outside California, construction contracts and over the counter sales, leases and lease-end purchases, etc... For this reason a simple variation from prior reporting patterns does not in and of itself establish the probability of a local tax misallocation, even when noted on a LRAU goldenrod. HdL agrees with other interested parties that BOE staff should be held to the same requirements for establishing a date of knowledge as are jurisdictions and their consultants under Regulation 1807.

The Board has long touted and promoted the need for transparency. If Staff has in its possession sufficient facts to indicate the probability of a misallocation this should be operationally documented for the review and consideration of all interested parties. Where Staff has not completed (or in some cases even initiated) an investigation into an observed reporting aberration it should not be deemed to have established a date of knowledge.

This issue extends well beyond the somewhat trivial determination of who gets to claim having “found” a local tax misallocation first. At the end of the day the Board, local jurisdictions and their consultants all share a common goal, and should be working together wherever possible. However, a true and realistic assessment of exactly how, when and where the Board obtained sufficient facts to indicate the probability of a misallocation is an important component of an overall case, and should therefore not be subject to a unilateral and unverifiable determination.

4. Acknowledgment of Petition

On January 27, 2012 we received via email a revised Section 905.030 concerning acknowledgment and review of petitions. This revised Section provides that receipt of a petition will be acknowledged within

30 calendar days. The Allocation Group then has an additional 30 days to send notice of any petition it deems to be invalid or incomplete, after which jurisdiction or consultant has 30 days make a supplemental submission. While we generally support this provision, we are concerned that this could potentially create an additional 60-90 day delay before an investigation is even initiated.

During the Interested Parties meetings Staff proposed an additional position at the Allocation Group level to triage and route incoming local tax petitions so that unnecessary delays can be eliminated. We support this proposal and ask that the Board move forward in filling this position as soon as reasonably possible.

We also have some concerns over the criteria that Allocation Group staff may use to reject a petition as incomplete, particularly the requirements for "evidence" under Regulation 1807(a)(3)(E). We have and will continue to provide as much information as possible along with each petition, including emails, amended schedules, and any other written confirmation from the taxpayer. However, we maintain that the occasional absence of this documentation does not in and of itself support a determination that a petition is incomplete.

5. Notification Prior to Processing a Large Deallocation

This remains an important issue to HdL clients, who on occasion have felt "blind-sided" by a very large deallocation with no advance notice. We recognize that these audit-related adjustments are not subject to appeal or mitigation, and that the Board is not technically obligated under any current regulation or statute to send notice. We therefore very much appreciate staff's willingness to do so, subject to some reasonable threshold.

HdL had initially suggested a \$10,000 threshold; Staff has proposed that the threshold be set at \$100,000. However, we represent 59 agencies for which \$100,000 is more than 25% of their average quarterly allocation. While we appreciate the desire to have a flat threshold universally applied to all agencies (as opposed to a percentage-based trigger), the obvious downside is that smaller agencies are disproportionately affected.

In recognition of the complexities inherent in using a percentage-based trigger, and in the spirit of compromise, we suggest that the threshold be moved to \$50,000. We believe that this is a reasonable compromise that addresses all competing concerns. In addition, we are open to any further suggestions from Staff as to how to minimize the work involved in sending notifications. For example, perhaps email notifications could be sent in lieu of a hard-copy letter.

6. Forms BOE-549-L and BOE-549-S

HdL exclusively uses the BOE-549-S (referred to as the "short form"), and has successfully filed literally thousands of petitions that have been deemed to meet the Board's evidentiary requirements, even for cases involving complex use tax transactions. At the January 18, 2012 Interested Parties meeting Board Staff raised a question as to whether two separate forms are even necessary. We submit that a two-page long form is not necessary, and that the one page BOE-549-S could be modified to provide an opportunity to submit all necessary and relevant information.

Other interested parties have raised the concern that providing a section or opportunity to submit an additional piece of information (an email address for example) could be construed as adding another

requirement to deem a petition "complete". We trust that it is not the intent of Board Staff to add requirements beyond those stipulated in Regulation 1807.

Interested parties have been informed repeatedly that Board Staff "is revising" the forms. We reiterate our request to be involved in a meaningful way in this process, and are available at any time for any future meetings or discussions as to the form content and layout.

7. Proposed Revisions for the AG Training Manual and APMG

We support Staff's proposed revisions to the AG training manual. We believe that it will be very helpful to formalize the guidelines for contacting taxpayers, and believe that this should also include an escalating level of response when a taxpayer is deemed to be "uncooperative".

We remain very concerned about the impact of large rebate agreements on the integrity of the entire Bradley Burns local tax system, and in particular on local tax investigations where the taxpayer who is the direct recipient of the rebate is also the primary source of information regarding the company's business activities. We therefore are in strong support of adding a section to the AG training manual concerning this topic.

Once again we thank you for the opportunity to comment on the above items as they are very important to the client agencies we serve. We appreciate your consideration of our concerns and suggestions.

Sincerely,



Matt Hinderliter



February 2, 2012

Via electronic mail

Dave.rosenthal@boe.ca.gov
Lynn.whitaker@boe.ca.gov
Leila.hellmuth@boe.ca.gov

Subject: Proposed Revisions CPPM Chapter 9: MuniServices' Comments and
Suggestions in Response to Interested Parties Meeting January 18, 2012.

To whom it may concern:

We have attached a copy of CPPM Chapter 9 with our suggested changes. The purpose of this letter is to highlight a few of the key changes. We thank staff for the changes that have already been made. The following are submitted in the continued spirit of dialogue, as with previous communications on this matter.

1. The Date of Knowledge (DOK).

As we previously noted, it is imperative that the BOE staff be held to the same requirements for establishing a DOK as are the jurisdictions and their consultants. We are, however, in agreement with staff that a call to the local representative of a taxpayer may not be required in every instance. Accordingly, we have changed our suggestion to reflect that the staff must document the information required in Regulation 1807 (a)(3)(E) & (G) and to recommend, but not require, contact with the taxpayer's local contact person.

2. Forms BOE-549-L (long form) & BOE-549-S (short form).

From the comments at the Interested Parties meetings on December 1, 2011 and January 18, 2011, we understand that BOE staff's position is to keep the use of the forms basically as they are, but that staff might consider additional fields on the forms to allow for providing more information. We cannot agree to changes we have not seen. But we are open to participating in a joint-process to revise the forms and to add additional, optional fields.

3. Threshold (905.020).

We continue to oppose this change as unauthorized and harmful to small jurisdictions. We continue to request that this matter be removed from this process and that full hearings be held separately on this issue.

4. Revisions to AG Training Materials

We thank staff for their forward thinking in this area. We have one item of concern. We feel that when the Board held hearings on the changes to Regulation 1807 it signaled its desire for a cooperative

investigative process. In that spirit we continue to propose that if we have questions for a non-cooperative taxpayer that there be a formal process in place for us to submit those questions to staff and, absent compelling circumstances, for staff to be required to forward those to the taxpayer as part of their investigation.

5. Notification to Jurisdictions for Large Deallocations.

MuniServices continues to favor this change, which was suggested by HdL. We believe staff's suggested threshold of \$100,000 in local tax is far too high. We propose a \$10,000 local tax threshold for notification.

6. Copies of Contracts as Pre-requisites for Data Access.

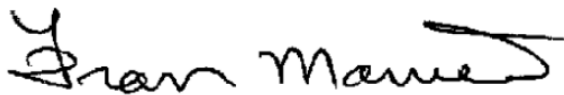
In a number of sections, including section 901.020, 901.030, 901.040, and 905.010 (in the second full paragraph), Staff have inserted a requirement that we provide a copy of the contract with the jurisdiction before the representative may access the data. The staff has no legal authority to and no expertise in evaluating the validity of our contracts with jurisdictions. The resolutions provide a factual representation about the contractual relationship and are the only required document that is a pre-requisite for representatives to have access to the records. While we will continue to comply with requests for copies of our contracts as a matter of courtesy, we oppose this attempt to add the copy of the contract as a required pre-requisite to access.

7. 30-day timeline for perfecting a petition.

We support the 30-day timeline in 905.030 for perfecting a petition. We have dropped our request that there be a "deemed" acceptance 60 days after the petition is submitted. We have, however, added language requiring acknowledgment of the receipt of the petition (not a determination of its validity) within 7 days of receiving the petition.

Once again, we most appreciate the thoughtful responses of staff to our prior suggestions and for their effort by board staff in drafting the proposed revisions to Chapter 9 and we thank you for the opportunity to comment. We believe that our suggested changes are within the spirit of this fine effort and will help to ensure that the process is transparent and is fair and equitable for all parties involved. We look forward to working with staff and members to continue to refine the process and content as it relates to CPPM Chapter 9.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Fran Mancie".

Francesco Mancia
Vice-president, Government Relations



Eric Myers, Esq.
Director, Local Tax Strategic Development/Assistant Subsidiary Counsel



Robert J. Wils
Senior Local Tax Advisor

cc:
Janis Varney
Carrie Toomey

Second Discussion Paper – Local Tax Reallocation Petitions
CPPM Chapter 9

Exhibit 1
Page 1 of 16

For ease of review, this exhibit shows changes tracked from the initial discussion paper.

LOCAL TAXING JURISDICTION REVIEW OF BOARD OF EQUALIZATION RECORDS

901.000

BACKGROUND

901.010

Revenue and Taxation Code (RTC) section 7056(b) allows authorized officers, employees, and designated persons representatives of jurisdictions imposing taxes under the Uniform Local Sales and Use Tax Law (RTC section 7200, et seq.) and jurisdictions imposing taxes under the Transactions and Use Tax Law (RTC section 7251, et seq.) (commonly known as "district taxes"), to view the confidential taxpayer records of the Board of Equalization (BOE) pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdictions they represent. For an authorized officer, employee, or designated person representing a jurisdiction to gain such access to BOE's confidential taxpayer records, the legislative body of the jurisdiction must adopt a resolution designating the representative as a person authorized to view such confidential taxpayer records on the jurisdiction's behalf. Unless the person so designated is an authorized officer or employee of the jurisdiction, the resolution must certify that the designated person has an existing contract with the jurisdiction to examine taxpayer records of the Board of Equalization (BOE) pertaining to the ascertainment of the local or district sales or transactions and use taxes to be collected by the BOE on the jurisdiction's behalf. The resolution must also certify that the contract between the jurisdiction and the person designated by the resolution has met all of the following conditions and, pursuant to that contract:

1. May be required by the contract to disclose information contained or derived from those confidential taxpayer records only to an officer or employee of the jurisdiction who is also authorized by the resolution to examine the records;
2. Is prohibited by the contract from performing consulting services for a retailer during the term of that contract; and
3. Is prohibited by the contract from retaining the information contained in or derived from the confidential taxpayer records after that contract has expired.

RTC section 7056(b)(2) further provides that information obtained by examination of BOE's the confidential taxpayer records may be used only for purposes related to the collection of the local or district tax pursuant to the contract, or for purposes related to other governmental functions of the jurisdiction as set forth in the jurisdiction's resolution.

RESOLUTIONS INFORMATION SUBJECT TO DISCLOSURE

901.020

The Local Revenue Allocation Unit (LRAU) is responsible for determining whether a particular jurisdiction has adopted a valid resolution authorizing an employee, officer, or other designated person to view confidential taxpayer records pursuant to RTC section 7056. A duly authorized officer or employee of the jurisdiction or designated person may only inspect taxpayer records all of the sales or transactions and use tax records of the BOE pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction(s) that person represents. that is, the person will This means the duly authorized officer, employee or designated person of that jurisdiction will be given access to file information including: only for (1) taxpayers with retail sales locations within the boundaries of the jurisdiction, or (2) taxpayers whose local or district tax was allocated to the jurisdiction by BOE, the particular

Comment [LLW1]: MuniServices commented that the language proposed by staff in 901.020 and 901.040 incorrectly limits the rights of jurisdictions and their consultants to view records.

Staff revised 901.010, 901.020, 901.030, and 901.040 to make the language consistent with RTC section 7056(b).

Comment [LLW2]: Added at the suggestion of MuniServices for clarification.

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~~jurisdiction(e) the person represents. Such information includes files of (3) taxpayers reporting tax to that jurisdiction's countywide pool, and (4) or taxpayers reporting tax to the statewide pool. The jurisdiction is entitled to information from the countywide and statewide pools because since the jurisdiction shares in those taxes, (note, h) however, a district is not entitled to taxpayer information from the that there is no statewide pool, because the district does not share in this tax pool as provided for taxes imposed under by the Transactions and Use Tax Law).~~ A representative of a district encompassing more than one county (such as the Bay Area Rapid Transit District) may obtain the countywide pool data for each county located within that district.

The Allocation Group (AG) and field offices, before allowing a person access to confidential taxpayer information, must verify with LRAU that a person seeking access to confidential ~~taxpayer~~ records on behalf of a jurisdiction imposing local or district tax is authorized by a valid resolution of that jurisdiction. If the person is a designated person of the jurisdiction, the AG and field offices must also verify that the designated person has an and existing contract with that jurisdiction, s, as applicable, prior to allowing that person access to confidential taxpayer records. This verification may be done by checking the current LRAU Resolution Log, or by telephone or email. If LRAU does not have a copy of the required authorizing document(s) on file, the person must provide a certified copy of such document(s), which should be faxed or scanned and emailed by AG or the field office to LRAU. LRAU will verify that the document(s) meets all the administrative criteria required to authorize the person to view confidential ~~taxpayer~~ records. If the documents do *not* meet the criteria, the person must be advised that, pending receipt of the applicable document(s), access to confidential file material will be denied.

Questions regarding the validity of resolutions, contracts, or other RTC section 7056 authorization issues should be directed to LRAU.

REQUEST TO REVIEW TAXPAYER SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED BY HEADQUARTERS 901.030

Requests by jurisdiction representatives to review taxpayer records should be forwarded to AG for processing. AG will verify that a valid resolution and contract is are is on file and will order the requested files from the Taxpayer Records Unit for review. AG will then review each file to locate and remove any information not subject to disclosure prior to presenting the file to the requester for review.

The requester will be required to complete a Form BOE-755, *Authorized Examination of Board Records*, for each file reviewed. The completed BOE-755 should detail the specific documents reviewed, including the time period of returns or other documents. Each completed BOE-755 will then be included in the taxpayer's file.

AG will provide space for the requester's examination of files in an observable area. Upon request, AG will also make copies of file material at no charge.

REQUEST FOR TAXPAYER INFORMATION TO REVIEW SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED AT A FIELD OFFICE 901.040

Requests for records maintained at the field office should be forwarded to either the District Principal Auditor or the District Principal Compliance Supervisor, who will confirm with LRAU that a valid resolution and contract is are is on file. Audit or compliance staff, when contacted directly by a person seeking access to taxpayer records on a jurisdiction's behalf, will inform and

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Comment [LLW3]: MuniServices commented there is no authority requiring the representative to provide this contract.

Staff response: Although not RTC section 7056 does not specifically require jurisdictions to provide a copy of the contract, staff believes it must be provided a copy of the contract to verify the designated person has an existing contract with the jurisdiction.

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consult with the District Principal Auditor or District Principal Compliance Supervisor before acting on the request.

If the request concerns the examination of a field office file and such a file exists, a review of that file will be made to locate and remove any material not subject to disclosure prior to presenting the file to the requester for review. The requester will be given access only to the field office files of taxpayers that pertain to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction they are determined to represent with retail sales locations in, or for which the retailer allocates local or district tax to, the jurisdiction on behalf of whom the requester is authorized to view confidential taxpayer information. Care will be taken to ensure that the requester is given access only to taxpayer records that pertain to the authorizing jurisdiction.

Comment [m4]: The Board, other than determining if there is a valid resolution on file for us, need not make any determination about whom we represent.

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The requester will complete a BOE-755 for each file reviewed. The completed form should detail the specific documents reviewed and include the time period of tax returns and/or dates of other documents.

The field office will provide space for the examination of files by the requester in an observable area. Upon request, the field office will also make copies of file material at no charge.

The original BOE-755, completed at the field office, will be sent to the taxpayer's file maintained by headquarters. A copy of the form may be included in the taxpayer's field office file.

INFORMATION NOT SUBJECT TO DISCLOSURE

901.050

Information not subject to disclosure includes:

1. Memoranda to or from the Legal Department marked "Confidential: Attorney — Client Privilege." (See explanation below regarding documents incorrectly marked, or not marked, as confidential.)
2. Memoranda directly related to litigation in which the BOE is a party, including refund and collection actions.
3. Memoranda to or from the Attorney General's office when the Attorney General is acting as the BOE's attorney.
4. Documents which relate to an ongoing criminal investigation.
5. Federal or state income tax returns or any item marked as Federal Tax Information.
6. Any information in the taxpayer's file that does not pertain to that taxpayer.

Internal memoranda, other than those specified above, are normally not to be regarded as confidential unless so marked. However, some documents may not be appropriately marked as confidential. If you question whether a document has been appropriately marked as confidential, or believe that a document should be so marked, contact the author of the document, the BOE's Disclosure Officer, or the Legal Department for guidance.

REQUEST FOR TAXPAYER RECORDS IN IRIS AND ACMS

901.060

There are no circumstances under which a jurisdiction's representative may be given unrestricted or unsupervised access to the IRIS or ACMS systems. In order to request records concerning specific taxpayer payments, the requester must complete a BOE-755, for each IRIS or ACMS account and specify the documents or confidential information being requested.

Second Discussion Paper – Local Tax Reallocation Petitions
CPPM Chapter 9

Exhibit 1
Page 4 of 16

When completed properly, BOE-755 meets the accounting requirements of the Information Practices Act, Civil Code section 1798.25.

Each BOE-755 must be verified to ensure that the requester is authorized to receive information pursuant to the Board of Equalization Administrative Manual sections 7207 – 7214 or RTC section 7056. The requestor must sign and date the BOE-755.

~~Using IRIS or ACMS~~If a request is made, a BOE employee will access the requested information, e.g., 2QXX local tax breakdown, and ~~the representative can then record the amount of local tax allocated to that particular jurisdiction~~print out the information for the consultant, or other information as specified on the BOE-755.

Comment [LLW5]: MuniServices asked why the current manual text providing that BOE employees will print out the information was revised to "the representative can then record the amount".

Staff restored the current provisions.

PROCESS FOR REVIEWING LOCAL TAX REALLOCATION PETITIONS

905.000

Regulation 1828, [Petitions for Distribution or Redistribution of Transactions and Use Tax](#), applies to appeals [from petitions](#) of [suspected improper](#) distributions [of district tax](#) under the Transactions and Use Tax Law. [and is. The provisions of Regulation 1828 are](#) essentially identical to Regulation 1807; for convenience, this CPPM chapter only refers to Regulation 1807.

DEFINITIONS

905.010

Petition

A "petition" is a written request or inquiry from a jurisdiction for investigation of suspected [misallocation](#) of local tax or district tax submitted to AG, except for a submission under RTC section 6066.3. (See CPPM 905.090 for RTC section 6066.3 submissions.) The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

1. Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.
2. Taxpayer's permit number or a notation stating "No permit number."
3. Complete business address of the taxpayer.
4. Complete description of taxpayer's business activity or activities.
5. Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or is a place of business, as defined by Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*. If the petition alleges that the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.
6. Name, title, and phone number of the contact person.
7. The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction based on a notification from LRAU that local taxes or district taxes previously allocated to it were misallocated and will be reallocated. If LRAU has a valid resolution [and contract](#) on file authorizing a representative of the jurisdiction to view confidential taxpayer information under RTC section 7056, LRAU will also send this notification to that representative.

A jurisdiction receiving such a LRAU notification may object to that notification by submitting a written petition to the AG supervisor within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification by LRAU is considered final as to the jurisdiction so notified.

Comment [LLW6]: MuniServices questioned why "misallocation" replaced the previous "improper distribution."

Staff response: 905.010 was revised to be consistent with the language of Regulation 1807 as revised in 2008. However, since Regulation 1828 does refer to "improper distribution" staff has revised 905.000 for clarification.

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The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from LRAU. Such a request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by LRAU within 30 days of the date of mailing of its notification. Within five days of receipt of the request, LRAU will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of LRAU is further extended to the 60th day after the date of mailing of the notification of misallocation.

Substantially Affected Jurisdiction

A "substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools. How jurisdictions are identified as substantially affected based on disputed pool allocations is discussed below.

Notified Jurisdiction

A "notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction. Once a jurisdiction is properly notified as a substantially affected jurisdiction, it maintains its status as a notified jurisdiction throughout the appeals process.

Note that the reallocation period may extend to the current day if the subject taxpayer remains engaged in the same activities covered by the petition, in which case, for purposes of this calculation, the reallocation period is regarded as extending through the end of the last quarter for which a return is filed prior to the finality date of the appeal. In such circumstances, the longer the appeals process takes to resolve, the more local tax will be at issue. Thus, a jurisdiction that is not substantially affected at one point in the appeals process can later become a substantially affected jurisdiction as the petition is appealed and time passes. For example, a jurisdiction that is not substantially affected when AG issues its supplemental decision may be substantially affected, and thus notified, at the time when the Decision and Recommendation is issued. Similarly, if a hearing is timely requested, a jurisdiction that is not notified as a substantially affected jurisdiction when the oral hearing notice is issued may later become substantially affected because the oral hearing is postponed or rescheduled and thus requires notification. Further, a jurisdiction not previously notified as substantially affected, will be notified if it becomes substantially affected upon discovery of an error in the original notice, or upon granting a petition for rehearing when the notice for rehearing is issued.

For a reallocation that would be made of amounts originally allocated through a countywide pool, the calculation of whether a jurisdiction must be notified as a substantially affected jurisdiction is not based on the actual amount that was originally allocated to that jurisdiction through its countywide pool, or on the amount that may be reallocated if the ultimate decision is to reallocate funds, but rather is based on the "Pool Notification Threshold List" maintained and updated annually by LRAU. This list will be posted to the BOE's website each calendar year ~~when as soon as~~ it is available.

Comment [LLW7]: Added at the suggestion of MuniServices.

This document lists, for each jurisdiction, the amount of countywide pool funds whose reallocation would result in the loss of sufficient revenue by that jurisdiction for it to constitute a substantially affected jurisdiction. The calculation is based on the average percentage of the countywide pool the jurisdiction received for the four calendar quarters of the year prior to the year of the list (e.g., the 2011 list is based on the four calendar quarters of 2010). That percentage is then used to determine the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of \$50,000.00, and the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of 5 percent or more of its average quarterly allocation (also based on the four calendar quarters prior to the year of the list). The lower of these two figures is the dollar amount of pool funds whose reallocation would result in that jurisdiction's being substantially affected, and is the amount used for that jurisdiction in establishing the Pool Notification Threshold List.

The first step in determining which jurisdictions must be notified because they are substantially affected by a decision is to determine the amount of funds from the applicable countywide pool that the decision recommends be reallocated. If ~~this the~~ amount to be reallocated is equal to or ~~less greater~~ than the threshold amount, that jurisdiction will be substantially affected by the decision and must be notified. For example, if AG issues a decision finding that a petition should be granted reallocating \$1,070,000.00 of County A's pool funds, it would notify all jurisdictions sharing in the countywide pool of County A whose percentage of the countywide pool is equal to or greater than the threshold amount reflected on the applicable list is equal to or less than ~~\$1,070,000.00****~~. Thus, a jurisdiction with a pool threshold amount of \$2,000,000 would not be notified, but a jurisdiction with a pool threshold amount of \$1,000,000 would be notified. (The same analysis is done to decide who must be notified of an appeals conference or Board hearing, except the comparison is to the amount of pool funds that would be reallocated if the petition is granted or denied.)

Thereafter, if a decision to reallocate funds originally allocated through a countywide pool becomes final, the actual amount reallocated will be based on the percentage of the pool that each pool participant receives for the quarter prior to the quarter in which the reallocation is made. Upon request, the petitioner or any substantially affected jurisdiction will be furnished copies of the calculations made to determine the parties to be notified.

SUBMITTING PETITIONS

905.020

To expedite processing, requests should be submitted by the petitioning jurisdiction or its authorized representative, who is submitting on behalf of the jurisdiction, on Form BOE-549-L, *Claimed Incorrect Distribution of Local Tax - Long Form*, or Form BOE-549-S, *Claimed Incorrect Distribution of Local Tax - Short Form*. Form BOE 549-L is used for complex local tax reallocation issues such as sales tax vs. use tax, place of sale, or other complex issues where more information is needed. Form BOE 549-S is used for simple tax reallocation questions having to do with taxpayers' business addresses or other less complex matters. These forms are available on the BOE website. The minimum threshold for processing fund transfers is ~~\$250~~ \$50 per quarter, or \$250 for the entire period in dispute, whichever is the lesser. The period in dispute means the three quarters prior to the Date of Knowledge quarter and the Date of Knowledge Quarter and all quarters between the Date of Knowledge and the date the decision to correct the misallocation becomes final.

Comment [LLW8]: MuniServices commented that this should be "greater."

Staff response: Staff agreed and added an additional sentence following the example to clarify.

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Comment [m9]: This figure should be the actual pool percentage figure that would trigger the threshold-notification.

Comment [LLW10]: HdL recommends that "Evidence" be added and defined to include any documentation or information sufficient to support the probability that an erroneous allocation of local tax may have occurred.

Staff response: Staff does not believe it is necessary to add this definition; staff believes it is redundant of the provisions of 905.040.

Comment [LLW11]: Added at the suggestion of MuniServices.

Staff response: This language was not included in Regulation 1807 because it was thought to be unnecessary. However, staff agrees to add clarification here.

Comment [LLW12]: MuniServices believes the threshold should remain \$50 and proposed a cumulative threshold of \$500.

HdL suggested an alternative increase of \$100.

The San Joaquin Council of Governments also opposes a change in the current \$50 threshold.

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The exception to these threshold amounts is for tax area code (TAC) changes. When there is a change to the TAC assigned to a taxpayer's address, BOE's computer system will automatically process fund transfers for periods that have been funded within two quarters prior to the date of the change regardless of whether the threshold was met in those quarters.

All petitions are to be sent directly to headquarters, rather than to a field office. Petitions should be mailed to:

Allocation Group
Board of Equalization
450 N Street, MIC 39
PO Box 942879
Sacramento, CA 94279-0039

(For submissions under RTC section 6066.3, see CPPM 905.090.)

ACKNOWLEDGMENT OF PETITION

905.030

AG will acknowledge petitions via email within 30-7 calendar days of receipt by the Board. Petitions will be logged in by permit number (if any), jurisdiction (if known), and representative (if any).

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Within 30 days of the acknowledgement, AG will review the petition for completeness. If the submission does not contain the elements identified in Regulation 1807(a)(3), the submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from AG requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements in Regulation 1807(a)(3), then the date of receipt of the original submission will be the date it is regarded as a valid petition. In the event that a submission is not perfected within this 30 day period, the submission will not qualify as a valid petition.

Comment [LLW13]: MuniServices recommended that if the petition is not sent back within 30 days, the petition be deemed to be accepted for purposes of establishing a DOK.

Staff response: Staff would like to discuss this issue further with interested parties. Although staff is willing to adhere to specific timelines, staff does not believe a petition can be accepted as valid by default.

DATE OF KNOWLEDGE

905.040

Unless an earlier date is operationally documented by the BOE, the date AG receives a valid petition is the "date of knowledge," which is a date that is critical for determining the beginning of the allocation period. (RTC section 7209 (statute of limitations for these petitions)). Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge remains the date AG received the valid petition.

A potential misallocation is "operationally documented" when a BOE employee questions the allocation based on information contained in the Board files *and* provides sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. In other words, a date of knowledge is operationally documented when two conditions are satisfied: (1) an employee of the Board discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and (2) the Board employee questions and documents that suspected erroneous allocation. Such documentation must include the information required for a petition under Regulation 1807 that supports the probability of a misallocation. The information should also include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact. The operationally documented date of knowledge will be the date the employee documents the date on which the distribution was questioned, such as the date it the employee

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Comment [LLW14]: MuniServices recommends adding: "Such documentation must include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, and the information required for a petition under Regulation 1807 that supports the probability of a misallocation."

Staff Response: Staff disagrees with the proposed addition as it is not always necessary to contact the taxpayer to establish that there is a basis for the suspected misallocation.

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issues, completes a BOE-523 form, Tax Return and/or Account Adjustment Notice, (see CPPM 335.000) or a BOE-75 form, LRAU Goldenrod and references the data that supports the suspected misallocation. An LRAU goldenrod is an internal form used by LRAU to record questionable local and/or district tax distributions, fund transfer approvals, and reallocation notifications.

If a petition regarding suspected improper distribution of local tax under the procedures set forth above and a submission under RTC section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed as a valid appeal, with its date of receipt establishing the date of knowledge for the alleged improper distribution (unless there is an even earlier operationally documented date of knowledge).

REVIEW BY SALES AND USE TAX DEPARTMENT AG 905.050

Investigation

Petitions will be coded for type of alleged misallocation and assigned to an auditor in AG. Assignments may coincide with investigations handled by LRAU. (Note that for assignments coinciding with investigations handled by LRAU, the LRAU Supervisor may be consulted.)

AG staff will use form the BOE-414-Z, *Assignment Activity History*, to record contacts, requests, staff actions, and other relevant events. For example, the BOE-414-Z should be used to record:

- Appointments made – record date, time, and purpose of the appointment.
- Appointments cancelled or rescheduled – record who requested the change and the reason for the request.
- Correspondence – record all letters and other materials given to and received from jurisdictions and taxpayers.
- Emails – record email contacts including a summary of the discussion or agreement; emails should not be copied directly into the BOE-414-Z.
- Record requests – record all requests for records from taxpayers including the deadline given (usually 45 days).
- Referral to field office – record date referred and appropriate follow-up date (30 days for in-state field offices and 60 days for out-of-state field offices).

The auditor will attempt to resolve all petitions through communication with the taxpayers including contacting the "contact person" identified in the petition or other such taxpayer personnel. If for some reason a satisfactory response cannot be obtained, the petition may be referred to the appropriate field office for action. The petition will be discussed with the AG supervisor and the petitioner will be notified before a petition is referred to a field office. Referrals to the field office will include specific instructions to field office staff for the information sought. A copy of any correspondence will be sent to the petitioner.

The AG lead and AG supervisor will review the status of petitions as the petitions age. The AG lead will follow-up monthly with staff for any assignments aged 90-180 days. The AG supervisor will follow up on assignments aged greater than 270-180 days.

Initial Decision

After a petition has been investigated, AG will prepare a written decision to grant the petition, deny the petition, or grant the petition in part and deny it in part. The written decision will include the basis for that decision and the date of knowledge, and if that date is other than the

Comment [LLW15]: MuniServices believes that follow up should occur before the end of the six month period, such as at 150 days.

Staff Response: Staff believes the 180 day timeline is appropriate and is consistent with the provisions of 1807(b)(3).

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date the petition was received, will include the basis for that date. AG will send its decision to the petitioner and, if applicable, any substantially affected jurisdiction.

If a petition is denied, in whole or in part, the petitioner may submit to AG a written objection to the decision, and if the petition is granted, in whole or in part, a notified jurisdiction may likewise submit to AG a written objection to the decision. Any such objection must be submitted within 30 days of the date of mailing of AG's decision, or within a period of extension as explained below.

If no timely objection is submitted, the AG decision is final as to the petitioner and all notified jurisdictions.

Delayed Investigation – Petitioner's Recourse

If AG does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that AG issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, AG will issue its decision based on the information in its possession.

Second Review by AG

If the petitioner or a notified jurisdiction submits a timely written objection to the AG decision, AG will consider the objection and issue a written supplemental decision to grant the objection, deny the objection, or grant the objection in part and deny it in part, along with the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

The petitioner or any notified jurisdiction may appeal the AG supplemental decision by submitting a written objection to AG within 30 days of the date of mailing of the supplemental decision (or within a period of extension as explained below). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position. If the petitioner or any notified jurisdiction timely appeals the AG supplemental decision, AG will prepare the file and forward it to the Appeals Division within 30 days of receipt of the objection.

If no timely objection is submitted, the AG supplemental decision is final as to the petitioner and all notified jurisdictions.

Delayed Investigation – Petitioner's and Notified Jurisdictions' Recourse

If AG does not issue a supplemental decision within three months of the date it receives a timely objection to the AG decision, the petitioner or any notified jurisdiction may request that AG issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, AG will issue its supplemental decision based on the information in its possession.

Extensions of time

The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection to either a decision or supplemental decision issued by AG. The request must:

1. Provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days,

2. Be copied to all other jurisdictions to whom AG mailed a copy of its decision or supplemental decision, and
3. Be received by AG within 30 days of the date of the decision or supplemental decision.

Within five business days of receipt of the request, AG will mail notification to the petitioner and all notified jurisdictions whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection is extended to the 60th day after the date of the mailing of AG's decision or supplemental decision. If the request for extension is denied, the time for the petitioner and any notified jurisdiction to file an objection AG's decision or supplemental decision is extended to 10 days after the mailing of the notice denying the extension.

REVIEW BY APPEALS DIVISION

905.060

If a timely objection to the supplemental decision has been submitted, AG will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. Where AG has forwarded a file to the Appeals Division for the holding of an appeals conference, The Appeals Division will coordinate with the Case Management Section of the Board Proceedings Division, who will schedule the appeals conference and mail notice of that conference to the petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted or denied, and AG. Generally, appeals conferences are scheduled in the order received by the Appeals Division.

Comment [LLW16]: Clarified to include the provisions of 1807(c)(2).

Return of Petition to AG

The petitioner or any notified jurisdiction may continue to discuss the dispute with AG staff after the petition is referred to the Appeals Division. If, as a result of such discussions or otherwise, AG decides its supplemental decision was incorrect or that further investigation is warranted, it will so notify the Appeals Division, the petitioner, and all notified jurisdictions.

If AG sends such notice to the Appeals Division no later than 30 days prior to the appeals conference, the Appeals Division will suspend its review and will return the petition to AG. Thereafter, AG will issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

Comment [LLW17]: MuniServices asked if jurisdictions will have an opportunity to submit a response to such a report. (Similar language in the following paragraph.)

If AG sends such notice to the Appeals Division less than 30 days prior to the appeals conference, the Appeals Division will decide whether the petition should be returned to AG or should remain with the Appeals Division, and will notify the parties accordingly. If the petition is returned to AG, AG will thereafter issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

Staff Response: The provisions of this section are found in Regulation 1807(c)(2)(B) and (C). If AG does not issue a second supplemental decision, the information included in the report will be shared with jurisdictions; jurisdictions may respond to the information in their pre-conference submissions.

Where AG issues a second supplemental decision, it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection within 30 days of the date of mailing of that supplemental decision, or within a period of authorized extension. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

Appeals Conference

The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and AG have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. See Regulation 1807(c)(3) for procedures for local tax appeals.

Decision and Recommendation

The appeals conference holder will notify the conference participants when the final submission of information authorized by Regulation 1807(c)(3) is received following the appeals conference. Within 90 days after the final submission, the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law, and the conclusions of the Appeals Division. The ~~Board's~~ ~~BOE's~~ Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and AG. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to AG.

Request for Board Hearing

The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing within 60 days of the date of mailing of the D&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R and include all additional information in its possession that supports its position.

Request for Reconsideration

The petitioner, any notified jurisdiction, or AG may also appeal the D&R by submitting a written request for reconsideration (RFR) to the Appeals Division within the same 60-day period during which a timely request for hearing may be submitted. If an RFR is submitted within this period, the Appeals Division will issue a Supplemental D&R (SD&R) to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. Where a Board hearing has been timely requested and an RFR is submitted more than 60 days after the mailing of the D&R, the Appeals Division will determine whether it should issue an SD&R in response. If not, a Board hearing will be held pursuant to the prior request.

Supplemental Decision and Recommendation

Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by AG as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R. However, in the rare circumstance where the members of the Board at an oral hearing request that the Appeals Division hold another conference, the Appeals Division will issue an SD&R.

Where the Appeals Division issues an SD&R (whether because an RFR was filed within 60 days of the mailing of the D&R or a prior SD&R or because the Appeals Division decides issuance of an SD&R is appropriate in response to a "late" RFR or on its own initiative), a copy of the SD&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to AG. The procedures for appealing the SD&R (i.e., requesting a Board hearing or reconsideration) are the same as those for appealing a D&R.

Finality of D&R or SD&R

If no RFR or request for Board hearing is submitted within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R (as applicable) is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues a SD&R prior to the time AG acts on the recommendation in the D&R or prior SD&R as a final matter.

REVIEW BY BOARD MEMBERS

905.070

If the petitioner or any notified jurisdiction submits to the Board Proceedings Division a timely written request for Board hearing (i.e., within 60 days of the date of mailing of the D&R or SD&R) the Board Proceedings Division will notify AG, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

AG, the petitioner, and all jurisdictions notified of the Board hearing are parties to the Board hearing. The taxpayer, however, is not a "party" to the Board hearing unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing.

To the extent not inconsistent with Regulation 1807, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Regulations 5510 - 5576). Briefs may be submitted for the hearing in accordance with the Rules for Tax Appeals (Regulations 5270 - 5271). (Note that no party to the hearing is required to file a brief; submission of a brief is entirely optional.) The party who requested the Board hearing may file an opening brief with the Chief of Board Proceedings no later than 55 days before the Board hearing. The brief must contain a statement of the facts and issues and a discussion of applicable legal authorities. When an opening brief is filed, the other party may file a reply brief with the Chief of Board Proceedings no later than 35 days before the Board hearing.

Only the jurisdiction(s) requesting the hearing can file an opening brief, and AG and any opposing jurisdiction(s) may file a reply brief only if the jurisdiction requesting the hearing or taxpayer actually files an opening brief. Since a taxpayer is specifically authorized by Regulation 1807, subdivision (d)(3), to become a party by filing a brief, a taxpayer may file a brief even though it is never the party who requested a hearing in reallocation matters and even if the jurisdiction(s) that did request the hearing does not file an opening brief.

The filing of the opening and reply briefs generally completes the pre-Board hearing briefing. However, if, *and only if*, the reply brief raises a new issue or argument, any other party may file a response brief with the Chief of Board Proceedings no later than 20 days before the Board hearing.

The Board's decision on the petition will become final 30 days after the date notice of the Board's decision is mailed to the petitioner(s) and notified jurisdiction(s) (and the taxpayer if it is a party), unless within that 30-day period a party to the petition files a Petition for Rehearing or the Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order. A Petition for Rehearing may be filed in accordance with the Rules for Tax Appeals (Regulation 5561).

Comment [LLW18]: Added information at the suggestion of Mr. Neil Shah.

The Board's final decision on the petition exhausts all parties' administrative remedies on the matter.

LIMITATION PERIOD FOR REDISTRIBUTIONS

905.080

Redistributions (also known as reallocations) cannot be made of amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge. (RTC section 7209, Reg. 1807(e).) It should be noted that this does *not* generally mean that the redistribution is limited to taxes incurred two quarters prior to the date of knowledge because this period is based on the date of *distribution*, not the date the tax was incurred, or the date the tax was remitted to the BOE. Generally, distributions are made the quarter following the period for which the tax is reported and paid. Taxes generally must be reported and paid by the last day of the month following the quarter incurred. Thus, the two-quarter limitation period for redistribution of local tax, which is based on the distribution date, allows redistributions of local tax *incurred* during the three quarters immediately preceding the calendar quarter of the date of knowledge.

For example, on March 15, 2008, City A files a petition for reallocation of local tax, asserting that in November 2006, a specific taxpayer who opened a business making over-the-counter retail sales in City A has not allocated any local tax to City A. AG issues a decision granting the petition based on its findings that petitioner is correct and that the taxpayer timely reported and paid local tax, but improperly allocated the tax to City B. The petition date, March 15, 2008, is the date of knowledge. Since that is in the first quarter 2008, the limitation period extends back two more quarters, to distributions made during the third quarter 2007. Since the local taxes for the second quarter 2007 were distributed during the third quarter 2007, pursuant to the decision of AG, local tax will be reallocated to City A beginning with the local taxes incurred during the second quarter 2007, beginning April 1, 2007. The local tax incurred by the taxpayer's location in City A for the periods prior to April 1, 2007 (i.e., November 2006 through March 2007) were reported and paid with the return due January 31, 2007, and April 30, 2007, and those taxes were distributed during the first and second quarters 2007, respectively, *more* than two quarters prior to the quarter of the date of knowledge. Therefore, reallocation of such taxes is barred.

The discussion above is based on the taxpayer's actual payment of tax when due. However, the BOE cannot distribute local tax until such tax is remitted by the taxpayer. Thus, where a taxpayer files a timely "non-remittance" return (without payment of the reported tax due) with all required local tax allocation schedules, there is no local tax revenue to distribute. When these funds are remitted, they will be distributed in accordance with the taxpayer's return, and it will be that date of actual distribution that is relevant for purposes of the date of knowledge analysis, *not* the date the tax was incurred. For example, using the same facts as in the prior paragraph except that the taxpayer filed a non-remittance return for the fourth quarter 2006 (November and December 2006), not paying that amount until June 15, 2007. The taxpayer timely paid the tax reported on all later returns. Thus, since the taxes incurred for the fourth quarter 2006 were not paid until June 2007, they were not distributed until the third quarter 2007, reallocation of such taxes is permitted for the date of knowledge in the first quarter 2008. However, since the taxes incurred for the next quarter (first quarter 2007) were distributed more than two quarters prior to the quarter of the date of knowledge (i.e., distributed during the second quarter 2007), reallocation of such local tax is barred.

The following schedule shows the remittance and distribution dates for a typical four-quarter period. The term "Remittance Date" means the date on which the BOE receives a taxpayer remittance. The term "Distribution Date" means the quarter in which the BOE makes payment

of revenue to local jurisdictions. Distributions are made four times per year, on the first Friday of March, June, September, and December.

Remittance Date	Distribution Date
Feb. 13 – May 13	2 nd Quarter
May 14 – Aug 13	3 rd Quarter
Aug. 14 – Nov. 13	4 th Quarter
Nov. 14 – Feb. 12	1 st Quarter

Comment [LLW19]: Staff deleted this sentence as unnecessary. Also, the actual distribution dates may vary year to year. However, staff posts the allocation calendar, which provides warrant/EFT payment dates, each year on the BOE website.

APPLICATION TO RTC SECTION 6066.3 SUBMISSIONS 905.090

The procedures set forth above are in addition to, but separate from, procedures established under the authority of RTC section 6066.3. That section authorizes each jurisdiction to collect and transmit to the BOE information from persons desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property. The information submitted serves as (1) a preliminary application for seller's permit, (2) notification to the BOE by the local jurisdiction of a person desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property, and (3) notice to the BOE for purposes of redistribution.

Where a petition regarding suspected improper distribution of local tax is filed under the procedures established under Regulation 1807 and a submission is also made under RTC section 6066.3 for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to the earliest submission. If multiple petitions are received for the same business, jurisdiction, and period that result in different fund transfers, the petitions will not be considered duplicates if the petitions do not contain the same reason for error and therefore would both be worked as separate petitions. The procedures set forth in subdivisions (b), (c), and (d) of Regulation 1807, which are discussed above, also apply to appeals from reallocation determinations made under RTC section 6066.3.

Comment [m20]: This is not the same criteria as "different reasons for error" which is currently in the CPPM. We have restored that criterion.

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Comment [LLW21]: The prior text of this section stated that duplicate inquiries will not be processed. And, a subsequent inquiry will not be considered a duplicate inquiry when that subsequent inquiry does not contain the same reasons for error as in another inquiry for the same taxpayer by the same city. MuniServices asked why this definition of duplicate inquiry was deleted.

The section was revised to the current text to explain what would happen if duplicates were received. Staff added this additional sentence for further clarification.

Comment [LLW22]: Added as suggested by MuniServices.

Comment [LLW23]: Revised based on comments from AG. AG would prefer to resolve issues at the time they are discovered in the field.

Comment [LLW24]: To confirm that section 7209 applies to non-audit adjustments discovered in an audit, MuniServices recommends adding, "The limitation period for adjustments that are not audit adjustments, i.e., deficiencies or refunds, is controlled by section 7209 of the Bradley Burns Local Sales and Use Tax law."

Staff response: Staff does not believe that the suggested revision is clear. However, staff added "the reported" in the first sentence to address MuniServices concerns.

KNOWLEDGE OF INCORRECT LOCAL TAX ALLOCATIONS OTHER THAN FROM PETITIONS BY LOCAL JURISDICTIONS AND REPRESENTATIVES 906.000

FIELD OFFICE RESPONSIBILITY 906.010

As explained in CPPM 905.040, a BOE employee who discovers an error in the allocation of local tax should must record the date that knowledge of the error was obtained.

If an error in the reported allocation of local tax is discovered by the field office, the auditor or field staff should confine his or her report of the necessary redistribution to amounts originally distributed within the limitation period, as explained above, which generally consists of tax reported for the three quarters immediately preceding the quarter in which the error was discovered unless the field office file contains evidence of late returns and payments on billings, in which case, the extent of the limitation period should be determined based on the schedule in CPPM 905.080. If there is any question regarding the extent of the limitation period, the auditor or field representative should contact AG for assistance, report only tax for the aforementioned three quarterly periods and depend on headquarters' review for notification if additional information is needed. However, ~~e~~Every effort should be made to determine all amounts to be redistributed during the original field investigation. For additional instructions regarding Form BOE-414-L Auditor's Work Sheet Local Sales and Use Tax Allocation, see Audit Manual 0209.00.

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HEADQUARTERS RESPONSIBILITY

906.015

Redistributions in Headquarters will be subject to the same review as redistributions that are received from field offices.

Allocation Group (AG)

In general, AG will make all redistributions of local tax and district taxes as a result of petitions from jurisdictions or their authorized representative, submitting on behalf of the jurisdiction. AG has the responsibility to examine all reports of errors in distribution that are received from field offices (BOE audits, reaudits, field billing orders, petitions from jurisdictions, and submissions under RTC section 6066.3) and verify by an examination of the master file, or any other records in Headquarters, that the report includes all amounts within the limitation period. If this examination discloses that the limitation period extends beyond the point covered by the report and information regarding the amount to be redistributed cannot be determined from the records in Headquarters, the necessary additional information will be requested from the field office.

Comment [LLW25]: Added at the suggestion of MuniServices for clarity.

Local Revenue Allocation Unit (LRAU)

LRAU handles redistributions of local tax and district taxes discovered during reviews of returns, as well as redistributions resulting from corrections to the Tax Area Codes, exclusive of excluding redistributions resulting from BOE audits, reaudits, FBO field billing orders, petitions from jurisdictions (see CPPM 905.000), and submissions under RTC section 6066.3 (see CPPM 905.090). LRAU processes all field audit redistributions of district taxes submitted by field offices.

Comment [LLW26]: Revised based on suggestion from MuniServices.



SAN JOAQUIN COUNCIL OF GOVERNMENTS

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January 23, 2012

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CHAIR

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VICE CHAIR

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EXECUTIVE DIRECTOR

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CITIES OF
ESCALON,
LATHROP,
LODI,
MANTECA,
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AND
THE COUNTY OF
SAN JOAQUIN

Ms. Lynn Whitaker
Business Taxes Committee Team
State Board of Equalization
Via Email

Dear Ms. Whitaker,

I am writing to you on behalf of the San Joaquin County Transportation Authority/San Joaquin Council of Governments.

We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action.

While these amounts may seem trivial, they are important to us.

Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold.

We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Sincerely,

A handwritten signature in blue ink that reads "Steve Dial".

STEVE DIAL
Deputy Executive Director/Chief Financial Officer

From: [Rosa Rios](#)
To: [Whitaker, Lynn](#)
Subject: CPPM 9
Date: Monday, January 23, 2012 5:35:27 PM

Dear Ms. Whitaker,

I am writing to you on behalf of the City of Delano. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Regards,

Rosa Rios

Director of Finance/Treasurer
City of Delano
1015 Eleventh Avenue
Delano, CA 93216-3010
661-720-2235

From: [Gutierrez, Francisco](#)
To: [Whitaker, Lynn](#)
Date: Monday, January 23, 2012 6:05:50 PM

Dear Ms. Whitaker,

I am writing to you on behalf of the City of Santa Ana. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you table this proposed change and to hold full hearings on why such a change is necessary.

Sincerely,

Francisco Gutierrez
Executive Director of Finance
City of Santa Ana

From: [Phyllis Garrova](#)
To: [Whitaker, Lynn](#)
Cc: [Julia James](#); carrie.toomey@MuniServices.com
Subject: SBOE Proposed Changes to Reallocation Threshold
Date: Tuesday, January 24, 2012 9:51:26 AM

Good morning Ms. Whitaker,

I am writing to you on behalf of the City of Fullerton. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem insignificant, they are important to us. Additionally, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Thank you,

Phyllis Garrova
City Treasurer/Revenue & Utility Services Manager
City of Fullerton
714/738-6573

From: [Thomas Fil](#)
To: [Whitaker, Lynn](#)
Subject: SBOE Proposed Changes to Reallocation Threshold
Date: Tuesday, January 24, 2012 4:30:30 PM

Dear Ms. Whitaker,

I am writing to you on behalf of the City of Belmont. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action.

Applying the same logic in determining tax liability, we believe the appropriate threshold should be low. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Regards,

Thomas Fil
Finance Director
City of Belmont

From: [Gray, Joe](#)
To: [Whitaker, Lynn](#)
Cc: [Gray, Joe](#)
Subject: City of Napa - Opposition to Manual Correction Fee from \$50 to \$250 per Qtr
Date: Friday, January 27, 2012 3:03:19 PM

Dear Ms. Whitaker, I am writing to you on behalf of the City of Napa. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Thank you,

Joe Gray | Finance Director

City of Napa | Finance Department | P.O. Box 660 | Napa, CA 94559-0660

Ph (707) 258-7888 | Fx (707) 257-9251 | jgray@cityofnapa.org

The Finance Department provides sound management of the City's financial assets and delivers timely, accurate information to our organization and community in order to "preserve and promote the unique quality of life that is Napa".

From: [Brad Vidro](#)
To: [Whitaker, Lynn](#)
Subject: Threshold for Manual Corrections
Date: Monday, January 30, 2012 4:37:10 PM

Dear Ms. Whitaker

It has come to our attention that State Board of Equalization Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. The City of Solvang strongly opposes such an action. While these amounts may seem trivial, they are important to small cities like Solvang that rely on sales tax revenue to provide services to our citizens. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Brad Vidro
City Manager
City of Solvang
1644 Oak Street
Solvang, CA 93463
(805)688-5575

From: [Marisela Hernandez](#)
To: [Whitaker, Lynn](#)
Subject: RE: Proposed Threshold Increase for Manual Corrections of Sales Tax Reallocations
Date: Tuesday, January 31, 2012 11:50:02 AM

Dear Ms. Whitaker,

I am writing to you on behalf of the City of Riverbank. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Thank you.

Marisela Hernandez, Director of Finance
City of Riverbank
Ph: (209) 863-7110
Fax: (209) 869-7126
E-Mail: mhernandez@riverbank.org



Please consider the environment before printing this e-mail.

From: [Tyrell Staheli](#)
To: [Whitaker, Lynn](#)
Subject: SBOE Proposed changes to Reallocation Threshold
Date: Tuesday, January 31, 2012 11:57:33 AM

Dear Ms. Whitaker,

I am writing to you on behalf of the City of Ridgecrest. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Tyrell Staheli
Finance Director
City of Ridgecrest
(760)499-5020
tstaheli@ci.ridgecrest.ca.us

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From: [Gloriette Genereux](#)
To: [Whitaker, Lynn](#)
Cc: Carrie.Toomey@MuniServices.com; cself@placertitle.com; [Greg Nyhoff](#); [Dee Williams-Ridley](#)
Subject: SBOE Proposed Changes to Reallocation Threshold
Date: Tuesday, January 31, 2012 3:09:59 PM

Dear Ms. Whitaker,

I am writing to you on behalf of the City of Modesto. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Gloriette Genereux
Department of Finance
209 577.5371





Finance

REVENUE MANAGEMENT

January 31, 2012

Susanne Buehler, Chief of Tax Policy Division
MIL 92 State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279

Re: Oppose CPPM-9

Dear Ms. Buehler,

I am writing to you on behalf of the City of San José ("the City"). The City has recently been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. The City is opposed to such an action. While these amounts may seem trivial, they are important in the way the City searches for revenue. Furthermore, the City does not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. The City asks you to table this proposed change and hold full hearings on why such a change is necessary.

If you have any questions or need additional information, please contact me at (408) 535-7005 or Mark Brogan at (408)535-7092.

Sincerely,

Wendy J. Sollazzi
Division Manager, Finance Department

c: Lynn Whitaker, Business Taxes Committee Team, Board of Equalization

From: [Michelle Danaher](#)
To: [Whitaker, Lynn](#)
Subject: Price increase
Date: Wednesday, February 01, 2012 11:04:22 AM
Importance: High

Dear Ms. Whitaker,

I am writing to you on the behalf of the City of Villa Park. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us, especially for a City of our size. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full bearing on why such a change is necessary.

Thank you for your time,

Michelle Danaher
Finance Director, City of Villa Park
17855 Santiago Blvd.
Villa Park, CA 92861
Phone (714) 998-1500
Fax (714) 998-1508
[*mdanaher@villapark.org*](mailto:mdanaher@villapark.org)

From: [Terri Hemley](#)
To: [Whitaker, Lynn](#)
Subject: Change to manual corrections
Date: Wednesday, February 01, 2012 8:13:16 PM

Ms. Whitaker,

I am writing to you on behalf of the City of Folsom. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Thank you,
Terri Hemley
Financial Services Manager
City of Folsom
916-355-8301

From: [Gallegos, Gary](#)
To: [Whitaker, Lynn](#)
Subject: Oppose Increase in the Threshold for Manual Corrections in Compliance Manual, Chapter 9
Date: Thursday, February 02, 2012 5:07:47 PM

Dear Ms. Whitaker,

I am writing on behalf of the San Diego Association of Governments (SANDAG) to express concerns about the Board of Equalization (BOE) staff proposal to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter at the March 20, 2012, meeting. Our 2012 Legislative Program provides direction to staff to monitor and respond to legislation requiring local agencies to implement new administrative compliance measures. Although this may seem like a minor change to the BOE, many local governments like SANDAG, which administers a ½ cent local sales tax must use their due diligence to ensure that monies from voter approved measures are being spent for their intended purposes.

For these reasons, SANDAG requests that this item be tabled until a full hearing of the Board to discuss why such a change is necessary and whether the BOE has the authority to unilaterally increase the charge can be held.

Sincerely,
Gary L. Gallegos

From: [Wolinski, Mark](#)
To: [Whitaker, Lynn](#)
Subject: Threshold for manual corrections in CPPM 9 - Oppose
Date: Thursday, February 02, 2012 3:33:00 PM

Dear Ms. Whitaker,

I am writing to you on behalf of the City of Roseville. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter in the proposed State Board of Equalization Compliance Policy and Procedures Manual (CPPM) Chapter 9, regarding local tax reallocations that will be considered by the Board's Business Taxes Committee on March 20, 2012. *We oppose such an action.*

We are concerned with the proposal to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. Although Board Staff received an alternative proposal to increase the threshold from \$50 to \$100, we disagree that the threshold amount should be changed. Also, Board Staff has discussed a cumulative threshold that might lessen the impact of this change, but have not yet proposed such a cumulative threshold.

While these amounts may seem trivial, they are important to us. Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

If you have any questions regarding the impact these changes would have to the City of Roseville, please contact Russ Branson, Assistant City Manager/City Treasurer, at (916) 774-5320.

Sincerely,
Pauline Roccucci,
Mayor,
City of Roseville